



**Study Session Agenda  
City of Council Bluffs, Iowa  
July 24, 2017, 3:45 PM  
Council Chambers, 2nd Floor, City Hall  
209 Pearl Street**

**STUDY SESSION AGENDA**

- A. Pete Tulipana - Iowa West update
- B. Review Agenda



**Council Agenda, City of Council Bluffs, Iowa  
Regular Meeting July 24, 2017, 7:00 PM  
Council Chambers, 2nd Floor, City Hall  
209 Pearl Street**

**AGENDA**

**1. PLEDGE OF ALLEGIANCE**

**2. CALL TO ORDER**

**3. CONSENT AGENDA**

- A. Approval of Agenda & Tape recordings of these proceedings to be incorporated into the official minutes.
- B. Reading, correction and approval of the July 10, 2017 City Council Meeting Minutes.
- C. Resolution 17-157  
Resolution setting a public hearing for 7:00 p.m. on August 14, 2017 for services to HVAC controls security equipment, and emergency generator equipment plans & specifications and authorizing the City Clerk to advertise for bids for the Police Department Headquarters Testing & Special Inspections. Project# PD18-01.
- D. Resolution 17-158  
Resolution accepting the work of Compass Utility LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Lower Bennett Rehab, Phase VII. Project # PW17-10.
- E. Resolution 17-159  
Resolution accepting the work of KAV Contracting, LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Fire Bell Plaza. Project # BM 16-03.
- F. Resolution 17-160  
Resolution accepting the work of Compass Utility LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Harmony Street Rehab. Project #PW16-20.
- G. Mayor's Appointments
- H. Claims (4)
- I. Petition

#### **4. PUBLIC HEARINGS**

A. Resolution 17-161

Resolution approving the plans and specifications and authorizing the City Clerk to advertise for bids for the 28<sup>th</sup> Street Storm Sewer, Project # PW18-20A.

#### **5. ORDINANCES ON 1ST READING**

A. Ordinance 6300

An ordinance to amend Title 8 “Public Safety and Morals” of the 2015 municipal code, by amending “Chapter 8.44.015 – Criminal Trespass”

B. Ordinance 6301

Ordinance to amend the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.070 of the 2015 Municipal Code of Council Bluffs, Iowa, by rezoning Lots 259 and 260 Belmont Addition, and north half of a vacated alley from R-1/Single-Family Residential District to C-2/Commercial District as defined in Chapter 15.15 of the Municipal Code of Council Bluffs, Iowa.

#### **6. RESOLUTIONS**

A. Resolution 17-144

Resolution accepting settlement between the Iowa Insurance Division and Two Rivers Insurance Company. (Postponed from July 10, 2017)

B. Resolution 17-162 A & B

17-162A, Resolution appointing Bankers Trust Company of Des Moines, Iowa, to serve as paying agent, bond registrar, and transfer agent, approving the paying agent and bond registrar and transfer agent agreement and authorizing the execution of the agreement

17-162B, Resolution incorporating prior bond issuance approvals on March 27, 2017 and June 12, 2017 all into one issuance with the proceeds being separately accounted for, approving the issuance of \$9,540,000 General Obligation Bonds, Series 2017A, and levying a tax for the payment thereof and approving the Tax Exemption Certificate and Continuing Disclosure Certificate

C. Resolution 17-163

Resolution of Intent to vacate that part of 11th Avenue right-of-way abutting properties legally described as Lot 6, Block 11, Riddles Subdivision and the East one-half of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision; and to vacate that part of 11th Avenue right-of-way extending from the East right-of-way line of South 6th Street to the West right-of-way line of South Main Street; and to vacate the West North/South alley in Block 15, Riddles Subdivision and setting a Public Hearing for August 14, 2017 at 7:00 p.m.

D. Resolution 17-164

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and Legacy Home Development LLC for Workforce Housing Tax Incentive Program (WHTIP) benefits.

E. Resolution 17-165

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and Eagle 4, LLC for Workforce Housing Tax Incentive Program (WHTIP) benefits.

F. Resolution 17-166

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and New Community Development Corp., dba NeighborWorks Home Solutions for Workforce Housing Tax Incentive Program (WHTIP) benefits.

G. Resolution 17-167

Resolution accepting the bid of Hawkins Construction Co. in the amount of \$2,563,803.92 for the 9<sup>th</sup> and 10<sup>th</sup> Street Bridges over Indian Creek. Project # FY15-19.

H. Resolution 17-168

Resolution accepting the bid of Olsson Associates in the amount of \$34,422 to provide Testing & Special Inspections services for the Police Department Headquarters project. Project# PD18-01.

I. Resolution 17-169

Resolution authorizing the Mayor to enter into cooperative agreement with IDOT, for Phase I-Realignment of Dodge Riverside Golf Club as required to accommodate IDOT Project IMN-029-3(211)54OE-78.

J. Resolution 17-170

Resolution authorizing the Mayor to execute an agreement with Studio 15 for third party inspection services at the Vandalay project site.

**7. APPLICATIONS FOR PERMITS AND CANCELLATIONS**

A. Liquor Licenses

- 1) American Legion, 716 4th Street (Renewal)
- 2) Underground Restaurant & Billiards, 28 S. 29th Street (Renewal)
- 3) Council Bluffs Ribfest 2017 on 8-11-17 (Special Event)

**8. CITIZENS REQUEST TO BE HEARD**

A. Rhonda Burman - 190 Bennett Ave

**9. ADJOURNMENT**

DISCLAIMER:

*If you plan on attending this meeting and require assistance please notify the City Clerk's office at (712) 328-4616, by 5:00 p.m., three days prior to the meeting.*



## **City Council Meeting Minutes July 10, 2017**

### **CALL TO ORDER**

A regular meeting of the Council Bluffs, City Council was called to order by Matthew J. Walsh on Monday July 10, 2017 at 7:00 p.m.  
Council Members present: Melissa Head, Al Ringgenberg, Nate Watson and Sharon White. Roger Sandau by Telephone.  
Staff Present: Jodi Quakenbush and Richard Wade.

### **CONSENT AGENDA**

Approval of Agenda & Tape recordings of these proceedings to be incorporated into the official minutes.

Reading, correction and approval of the June 26, 2017 City Council Meeting Minutes.

Resolution 17-146, Resolution setting a Public Hearing for 7:00 p.m. on July 24, 2017 for the 28<sup>th</sup> Street Storm Sewer. Project #PW18-20A.

Resolution 17-147, Resolution accepting the work of Driver Sewer and Water as complete and authorizing release of retainage for the Walnut Grove Subdivision Sanitary Sewer Replacement Project

Resolution 17-148, Resolution accepting the work of Valley Corporation as complete and authorizing release of the retainage after 30 days if no claims are filed in connection with the Levee Certification Project, Geotechnical MR\_7. Project # PW16-06B.

Resolution 17-149, Resolution accepting the work of Carley Construction LLC as complete and authorizing release of the retainage in 30 days if no claims are filed for the Mid-City Trail, Phase 2 Project

Resolution 17-150, Resolution accepting the work of Compass Utility LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for South 1<sup>st</sup> St. Neighborhood Rehab, Phase VII. Project #PW17-12.

Claim, Mayor's Appointments, Board of Water Works Trustees 2016 Annual Report (Separate Cover)

Al Ringgenberg and Melissa Head moved and seconded approval of Consent Agenda and postponing item 6A, 17-144 until July 24, 2017. Unanimous, 5-0 vote.

## **PUBLIC HEARINGS**

Resolution 17-151, Resolution authorizing the Mayor and City Clerk to execute an underground pipeline easement in connection with a water line relocation by the Council Bluffs Water Works for the West Broadway, Segment 1 Reconstruction Project.

Sharon White and Al Ringgenberg moved and seconded approval of Resolution 17-151. Unanimous, 5-0 vote.

Resolution 17-152, Resolution approving the plans and specifications and authorizing the Iowa Department of Transportation to advertise for the Eastern Hills Drive and Cedar Lane Construction. Project # PW17-16A.

Al Ringgenberg and Melissa Head moved and seconded approval of Resolution 17-152. Unanimous, 5-0 vote.

## **ORDINANCES ON 3RD READING**

Ordinance 6299, An Ordinance to amend Title 12 "Council Bluffs Fire Code" by repealing the 2009 International Fire Code and enacting the 2015 International Fire Code.

Sharon White and Nate Watson moved and seconded approval of Ordinance 6299. Unanimous, 5-0 vote.

## **RESOLUTIONS**

Resolution 17-144, Resolution accepting settlement between the Iowa Insurance Division and Two Rivers Insurance Company. (Postponed from June 26, 2017)

Postponed with Consent Agenda motion, to July 24, 2017 at 7:00 p.m.

Resolution 17-153, Resolution directing Sale of \$9,980,000 (Subject to Adjustment per Terms of Offering) General Obligation Bonds, Series 2017A

Sharon White and Melissa Head moved and seconded approval of Resolution 17-153. Unanimous, 5-0 vote.

Resolution 17-154, Resolution assessing \$9,514.00 in unpaid weed abatement cost against property owners with the County Treasurer.

Melissa Head and Nate Watson moved and seconded approval of Resolution 17-154. Unanimous, 5-0 vote.

Resolution 17-155, Resolution assessing the unpaid solid waste nuisance cost against property owners with the County Treasurer.

Heard from Bruce Kelly, 864 McKenzie Avenue.

Sharon White and Melissa Head moved and seconded approval of Resolution 17-155. Unanimous, 5-0 vote.

Resolution 17-156, Resolution approving the use of 2018 Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) program funds and directing the Mayor to submit the 2018 Annual Plan to the City of Omaha and the U.S. Department of Housing and Urban Development (HUD)

Sharon White and Nate Watson moved and seconded approval of Resolution 17-156. Unanimous, 5-0 vote.

## **APPLICATIONS FOR PERMITS AND CANCELLATIONS**

### **Liquor License Renewals**

- 1) Dollar General, 2731 East Kanessville Blvd
- 2) Pilot Travel Center, 2647 South 24th Street
- 3) Queen of Apostles Church, 3304 4th Avenue
- 4) Super Quik Stop, 2800 Twin City Drive

### **Cigarette Permits (7)**

Sharon White and Melissa Head moved and seconded approval of Applications for Permits and Cancellations 7A & 7B. Unanimous, 5-0 vote.

## **CITIZENS REQUEST TO BE HEARD**

Heard from Bruce Kelly, 864 McKenzie Avenue, regarding a bike trail from Simms to McKenzie

Heard from Spencer Matthews, 262 Euclid and Bob Wambold, 3342 Avenue B, both with fireworks complaints.

Walsh, Head, White and Watson all spoke in regards to Fireworks.

## **ADJOURNMENT**

Mayor Walsh adjourned the meeting at 7:48 pm.

The tape recording of this proceeding, though not transcribed, is part of the record of each respective action of the City Council. The tape recording of this proceeding is incorporated into these official minutes of this Council meeting as if they were transcribed herein.

Matthew J. Walsh, Mayor

Attest: Jodi Quakenbush, City Clerk

## Council Communication

Department: Police  
Case/Project No.: PD 18-01  
Submitted by: Tim Carmody, Chief  
of Police

Resolution 17-157

Council Action: 7/24/2017

### Description

Resolution setting a public hearing for 7:00 p.m. on August 14, 2017 for services to HVAC controls security equipment, and emergency generator equipment plans & specifications and authorizing the City Clerk to advertise for bids for the Police Department Headquarters Testing & Special Inspections. Project# PD18-01.

### Background/Discussion

In September 2015 a team from the Police Department, a citizen study group, and other City staff began working with an architecture team to conduct a needs assessment to determine the needs and scope of a new police headquarters and site selection.

In May 2016 the citizens of Council Bluffs approved a \$20 million bond to fund acquisition of the land, as well as the design and construction of the new police headquarters.

In July 2016 a design team was selected and approved by Council. The team, comprised of the internal planning team from the City and Police Department, Hoefer Wysocki Architecture and Project Advocates have diligently worked on the final design of the facility.

The General Contractor, Sampson Construction, Inc. was awarded the project on June 12, 2017. Construction began the week of July 10, 2017. The next step in the process is to set a public hearing to let the bids for services to provide HVAC controls, security equipment, and emergency generator equipment for the project.

The funding for this portion of the project is part of the overall budget for the project. The project is on schedule and on budget utilizing the available dollars (bond, grant, budget, and other non-budget funds).

The project schedule is as follows:	Set Public Hearing	July 24, 2017
	Hold Public Hearing	August 14, 2017
	Letting	Sept. 5, 2017
	Award	Sept. 25, 2017

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Notice of Public Hearing	Resolution	7/14/2017
Resolution 17-157	Resolution	7/18/2017



Notice of Public Hearing

on the

services for HVAC Controls, Security Equipment, and Emergency Generator Equipment, and  
cost estimate

for the

Police Department Headquarters

Project # PD 18-01

A public hearing will be held on August 14, 2017, at 7:00 p.m. in the council chambers of City Hall, 209 Pearl Street, Council Bluffs, Iowa, on the proposed services for HVAC Controls, Security Equipment, and Emergency Generator Equipment and cost estimate for the Police Department Headquarters project. At said hearing, any interested person may appear and file objections to such plans and specifications.

By Order of the City Council

of the

City of Council Bluffs, Iowa

Jodi Quakenbush, City Clerk

**RESOLUTION**  
**NO 17-157**

**RESOLUTION DIRECTING THE CLERK TO PUBLISH NOTICE  
AND SETTING A PUBLIC HEARING ON SERVICES FOR HVAC CONTROLS,  
SECURITY EQUIPMENT, AND EMERGENCY GENERATOR EQUIPMENT AND  
COST ESTIMATE FOR THE  
POLICE DEPARTMENT HEADQUARTERS  
PROJECT #PD 18-01**

WHEREAS, the City wishes to construct a police department headquarters within the City, as therein described; and

WHEREAS, the plans, specifications, form of contract and cost estimate are on file in the office of the city clerk.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

That the City Clerk is hereby ordered to set a public hearing on the plans, specifications, form of contract and cost estimate for services to provide HVAC Controls, Security Equipment, and Emergency Generator Equipment for the Police Department Headquarters Project setting August 14, 2017, at 7:00 p.m. as the date and time of said hearing.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the General Obligation Bond approved by voters May 3, 2016 and as such this is an appropriate expenditure of the that Bond.

ADOPTED  
AND  
APPROVED

July 24 2017

\_\_\_\_\_  
Matthew J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk

## Council Communication

Department: Public Works Admin  
Case/Project No.: PW17-10  
Submitted by: Matthew Cox, City  
Engineer

Resolution 17-158

Council Action: 7/24/2017

### Description

Resolution accepting the work of Compass Utility LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Lower Bennett Rehab, Phase VII. Project # PW17-10.

### Background/Discussion

Weaver's 3<sup>rd</sup> Addition and Seldin's 4<sup>th</sup> & 5<sup>th</sup> Additions are the residential areas east of Bennett Avenue from Franklin Avenue to McPherson Avenue. Prior to the rehabilitation program, the streets in this area were 40-50 years old and in poor condition. The storm sewers were also inadequate within the area.

Improvements included new concrete pavement, storm sewers, and sanitary sewers.

Phases I thru VI are complete and included portions of Arnold Avenue, Adrian Avenue, Mielke Way, Robin Road, Lillian Lane, Beal Street, Lake Street, Bonham Avenue, Wenwood Circle and Wedgewood Drive.

The project completed the remaining portions of Bonham Avenue, Wenwood Circle, Wedgewood Drive and Windsor Avenue and included Wenwood Court. This was the last phase of the Lower Bennett Neighborhood.

The project was included in the FY17 CIP with a budget of \$1,500,000 in Sales Tax Funds.

	<u>Division I</u> <u>General</u>	<u>Division II</u> <u>Pavement</u>	<u>Division III</u> <u>Storm Sewer</u>	<u>Division IV</u> <u>San. Sewer</u>	<u>Total</u>
Original Contract Amount	\$62,937.75	\$1,055,189.05	\$189,509.50	\$14,720.32	\$1,322,356.62
Change Orders (-3.56%)	\$4,135.72	(\$58,460.26)	\$7,676.30	(\$466.60)	(\$47,114.84)
Final Contract Amount	\$67,073.47	\$996,728.79	\$197,185.80	\$14,253.72	\$1,275,241.78
Less Previous Payments	\$63,719.80	\$946,892.35	\$187,326.51	\$13,541.03	\$1,211,479.69
Retainage Due Contractor	\$3,353.67	\$49,836.44	\$9,859.29	\$712.69	\$63,762.09

The Contractor completed the project on time and did not receive any non-compliance notices.

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Resolution 17-158	Resolution	7/18/2017

**RESOLUTION  
NO 17-158**

**RESOLUTION ACCEPTING THE WORK OF  
COMPASS UTILITY LLC IN CONNECTION WITH  
THE LOWER BENNETT REHAB, PHASE VII  
AND AUTHORIZING THE FINANCE DIRECTOR TO ISSUE  
A CITY CHECK IN THE AMOUNT OF \$63,762.09  
PROJECT #PW17-10**

WHEREAS, the City of Council Bluffs, Iowa, entered into an agreement with Compass Utility LLC, Council Bluffs, IA for the Lower Bennett Rehab, Phase VII; and

WHEREAS, said contractor has fully completed the construction of said improvements in accordance with the terms and conditions of said contract and plans and specifications filed with the city clerk; and

WHEREAS, a request for final payment in the amount of \$63,762.09 to Compass Utility LLC, has been submitted to the city council for approval and payment; and

WHEREAS, final payment is due 30 days after acceptance of the work; and

WHEREAS, the city council of the City of Council Bluffs has been advised and does believe that said \$63,762.09 constitutes a valid obligation of the City and should in its best interest be paid.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

Said improvements are hereby accepted as having been fully completed in accordance with plans and specifications.

AND BE IT FURTHER RESOLVED

That the finance director is hereby authorized and directed to issue a city check in the amount of \$63,762.09 payable to Compass Utility LLC from budget codes Division I, G21600-676000; Division II, G21600-676200; Division III, G21600-676500; Division IV, G21600-676700; Project #00554.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the 1989 Local Option Sales Tax Ballot and as such this is an appropriate expenditure of the Local Option Sales Tax Revenues

ADOPTED  
AND  
APPROVED

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk

## Council Communication

Department: Public Works Admin  
Case/Project No.: BM16-03  
Submitted by: Matthew Cox, City  
Engineer and Justin James, Fire  
Chief

Resolution 17-159

Council Action: 7/24/2017

### Description

Resolution accepting the work of KAV Contracting, LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Fire Bell Plaza. Project # BM 16-03.

### Background/Discussion

This project constructed a new bell tower to suspend the bell and a plaza with walls to display photos of the Council Bluffs Fire Department, both past and present. The bell is an important piece of history that can be appropriately displayed in the new tower. The location of the project at the corner of Willow and 4<sup>th</sup> Street makes it highly visible and easily accessed. The design will become a key fixture in the downtown, and adds another piece of historical art to the area.

The Fire Bell Plaza enhances the Fire Department's ability to show the history of the community through the eyes of the Department. One example of its use will be with the 2000 plus grade school children that tour Central Fire Station each year to learn about fire safety.

This project was included in the FY16 CIP and includes a budget of \$50,000 in Parks General Funds. In addition to CIP funding, the Fire Department has raised over \$96,000 in private donations and received an \$85,000 grant from the Iowa West Foundation.

Original Contract Amount	\$199,243.45
Change Orders (+11%)	\$21,858.10
Final Contract Amount	\$221,101.55
Less Previous Payments	\$210,046.46
Retainage Due Contractor	\$11,055.09

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Resolution 17-159	Resolution	7/18/2017

**RESOLUTION**  
**NO 17-159**

**RESOLUTION ACCEPTING THE WORK OF  
KAV CONTRACTING, LLC IN CONNECTION WITH  
THE FIRE BELL PLAZA AND  
AUTHORIZING THE FINANCE DIRECTOR TO ISSUE  
A CITY CHECK IN THE AMOUNT OF \$11,055.09  
PROJECT # BM16-03**

WHEREAS, the City of Council Bluffs, Iowa, entered into an agreement with KAV Contracting, LLC, Council Bluffs, IA for the Fire Bell Plaza; and

WHEREAS, said contractor has fully completed the construction of said improvements in accordance with the terms and conditions of said contract and plans and specifications filed with the city clerk; and

WHEREAS, a request for final payment in the amount of \$11,055.09 to KAV Contracting, LLC, has been submitted to the city council for approval and payment; and

WHEREAS, final payment is due 30 days after acceptance of the work; and

WHEREAS, the city council of the City of Council Bluffs has been advised and does believe that said \$11,055.09 constitutes a valid obligation of the City and should in its best interest be paid.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

Said improvements are hereby accepted as having been fully completed in accordance with plans and specifications.

AND BE IT FURTHER RESOLVED

That the finance director is hereby authorized and directed to issue a city check in the amount of \$11,055.09 payable to KAV Contracting, LLC from budget code K67100-676000; Project #00564.

ADOPTED  
AND  
APPROVED

July 24, 2017

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Matthew J. Walsh, Mayor

ATTEST:

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Jodi Quakenbush, City Clerk

## Council Communication

Department: Public Works Admin  
Case/Project No.: PW16-20  
Submitted by: Matthew Cox, City  
Engineer

Resolution 17-160

Council Action: 7/24/2017

### Description

Resolution accepting the work of Compass Utility LLC as complete and authorizing release of the retainage after 30 days if no claims are filed for the Harmony Street Rehab. Project #PW16-20.

### Background/Discussion

The Council Bluffs YMCA is currently constructing a new multi-million dollar, 73,000 SF facility located along Kanesville Boulevard and Harmony Street, between Baughn Street and Frank Street. The pavement and utilities around much of the site were in poor condition and in need of replacement.

This project reconstructed Harmony Street and Baughn Street in coordination with the YMCA construction.

Harmony Street was reconstructed from Benton Street to Frank Street and Baughn Street from Kanesville Boulevard to Harmony Street.

The project converted Baughn Street to a two-way street.

The project was included in the FY16 CIP with a budget of \$1,000,000 in Sales Tax Funds.

	Division I	Division II	Division III	Division IV	Division V	
	<u>General</u>	<u>Pavement</u>	<u>Storm Sewer</u>	<u>San. Sewer</u>	<u>Water</u>	<u>Total</u>
Original Contract Amount	\$62,990.64	\$417,853.08	\$41,036.32	\$159,038.18	\$140,029.78	\$820,948.00
Change Orders (-1.58%)	(\$2,851.33)	\$3,962.22	(\$595.98)	(\$12,126.31)	(\$1,330.12)	(\$12,941.52)
Final Contract Amount	\$60,139.31	\$421,815.30	\$40,440.34	\$146,911.87	\$138,699.66	\$808,006.47
Less Previous Payments	\$57,132.34	\$400,724.54	\$38,418.32	\$139,566.27	\$131,764.68	\$767,606.15
Retainage Due Contractor	\$3,006.97	\$21,090.77	\$2,022.01	\$7,345.59	\$6,934.98	\$40,400.32

The Contractor completed the project on time and did not receive any non-compliance notices.

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Resolution 17-160	Resolution	7/18/2017

**RESOLUTION  
NO 17-160**

**RESOLUTION ACCEPTING THE WORK OF  
COMPASS UTILITY LLC IN CONNECTION WITH  
THE HARMONY STREET REHAB  
AND AUTHORIZING THE FINANCE DIRECTOR TO ISSUE  
A CITY CHECK IN THE AMOUNT OF \$40,400.32  
PROJECT #PW16-20**

WHEREAS, the City of Council Bluffs, Iowa, entered into an agreement with Compass Utility LLC, Council Bluffs, IA for the Harmony Street Rehab; and

WHEREAS, said contractor has fully completed the construction of said improvements in accordance with the terms and conditions of said contract and plans and specifications filed with the city clerk; and

WHEREAS, a request for final payment in the amount of \$40,400.32 to Compass Utility LLC, has been submitted to the city council for approval and payment; and

WHEREAS, final payment is due 30 days after acceptance of the work; and

WHEREAS, the city council of the City of Council Bluffs has been advised and does believe that said \$40,400.32 constitutes a valid obligation of the City and should in its best interest be paid.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

Said improvements are hereby accepted as having been fully completed in accordance with plans and specifications.

AND BE IT FURTHER RESOLVED

That the finance director is hereby authorized and directed to issue a city check in the amount of \$40,400.32 payable to Compass Utility LLC from budget codes Division I, G21600-676000; Division II, G21600-676200; Division III, G21600-676500; Division IV, G21600-676700; Project #00559.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the 1989 Local Option Sales Tax Ballot and as such this is an appropriate expenditure of the Local Option Sales Tax Revenues

ADOPTED  
AND  
APPROVED

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk



## Council Communication

Department: City Clerk  
Case/Project No.:  
Submitted by: Matthew Walsh

Mayor's Appointments

Council Action: 7/24/2017

### Description

#### Background/Discussion

With City Council concurrence, I would like to make the following reappointments:

#### **CIVIL RIGHTS COMMISSION**

Reappoint the following with term expiring 08/01/2020:

- Mark Alba  
2734 Twelve Oaks Dr
- Tori Christie  
619 Roosevelt Av
- Troy Fienhold-Haasis  
421 Grave Av
- Aili Filippi-Johns  
205 Woodcliff Cr

#### Recommendation

Approval

JUL 14 2017 1:39PM

No. 9939 P. 2

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA  
ATTN: CITY LEGAL DEPARTMENT  
OR CITY CLERK  
209 PEARL STREET  
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. A330365P00  
17-PD-1840

## NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT: Leandra Horton DAY PHONE: 712-326-7979  
ADDRESS: 3133 270th St Logan, IA 51546 DOB: 8-1-1994

DATE & TIME OF LOSS/ACCIDENT: 5-29-17  
LOCATION OF LOSS/ACCIDENT: 25th St Council Bluffs IA  
DESCRIPTION OF LOSS/ACCIDENT: Please See Police Report

TOTAL DAMAGES CLAIMED: \$ 1,265.10 (USE BACK OF FORM, IF NECESSARY)

WITNESS(ES) (Name(s), Address(es), Phone No(s))

WAS POLICE REPORT FILED ☒ YES ☐ NO

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:

HAVE YOU RESUMED NORMAL ACTIVITIES? ☒ YES ☐ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY

OTHER RELEVANT INFORMATION: Left back bumper dented in and cracked  
You can see through my bumper now.

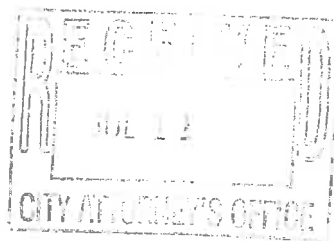
LIST INSURANCE PROVIDER AND COVERAGE:

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

7-5-17  
DATE

Leandra Horton  
CLAIMANT'S SIGNATURE



PM2:34

11 JUL 17

CLERK RCUD

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA  
ATTN: CITY LEGAL DEPARTMENT  
OR CITY CLERK  
209 PEARL STREET  
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 17-FD-1842

### NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT Henrietta Henderson DAY PHONE 323-8370  
ADDRESS 2321 S. 13<sup>th</sup> Street Council Bluffs IA DOB 5/7/39

DATE & TIME OF LOSS/ACCIDENT: 7/12/17 20:17

LOCATION OF LOSS/ACCIDENT: corner of 6<sup>th</sup> Ave. and 26<sup>th</sup> Street

DESCRIPTION OF LOSS/ACCIDENT: Council Bluffs fire truck was making a  
turn and made contact with Mrs. Henderson's car.  
Damage repair exceeded the value of the car

(USE BACK OF FORM, IF NECESSARY)

TOTAL DAMAGES CLAIMED: \$ 3087.00

WITNESS(ES) (Name(s), Address(es), Phone No(s))

WAS POLICE REPORT FILED ☒ YES ☐ NO 17-028806

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:

Vehicle was unoccupied

NA HAVE YOU RESUMED NORMAL ACTIVITIES? ☐ YES ☐ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY  
OTHER RELEVANT INFORMATION:

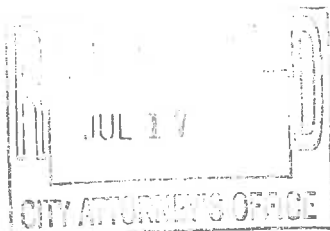
LIST INSURANCE PROVIDER AND COVERAGE:

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY  
CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A  
FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

7-17-2017  
DATE

Henrietta Henderson  
CLAIMANT'S SIGNATURE



CLERK RVD

17 JUL '17

AM 11:33

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA  
ATTN: CITY LEGAL DEPARTMENT  
OR CITY CLERK  
209 PEARL STREET  
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 17-PW-1841

### NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT: Dale C. Gaver Jr DAY PHONE: 402-505-9880  
ADDRESS: 2741 Newport Ave, Omaha, NE 68112 DOB: 12-27-1968

DATE & TIME OF LOSS/ACCIDENT: 07/12/2015 at 2:26 a.m.  
LOCATION OF LOSS/ACCIDENT: I 80 Westbound Off Ramp to South Expressway  
DESCRIPTION OF LOSS/ACCIDENT: On-ramp was changed into an off-ramp. Mr. Gaver travelled on the ramp thinking was the on ramp resulting in a crash.

(USE BACK OF FORM, IF NECESSARY)

TOTAL DAMAGES CLAIMED: \$ \_\_\_\_\_  
WITNESS(ES) (Name(s), Address(es), Phone No(s)): Dale C. Gaver Jr, 2741 Newport Ave, Omaha, NE 68112  
Officer Anthony Friend, Badge #742, Council Bluffs Police Department  
Tow Truck Driver of Arrow Towing that towed vehicle on 7/12/2016, 505 S 15 St, CB, IA

WAS POLICE REPORT FILED ☒ YES ☐ NO

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:  
Nebraska Medicine, PO Box 3839, Omaha, NE 68103-0839, 402-559-3140

HAVE YOU RESUMED NORMAL ACTIVITIES? ☐ YES ☒ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY OTHER RELEVANT INFORMATION: Mr. Gaver's 2001 Ford F-150 pick up was totalled in the accident.

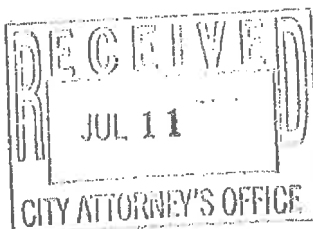
LIST INSURANCE PROVIDER AND COVERAGE: Progressive Casualty, 800-776-4737

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

7/11/2017  
DATE

Dale C. Gaver Jr  
CLAIMANT'S SIGNATURE



CLERK RCVD

12 JUL'17

AM9:36

RETURN TO: CITY OF COUNCIL BLUFFS, IOWA  
ATTN: CITY LEGAL DEPARTMENT  
OR CITY CLERK  
209 PEARL STREET  
COUNCIL BLUFFS, IA 51503

CITY CLAIM NO. 17-PD-1839

NOTICE OF CLAIM/LOSS

NAME OF CLAIMANT: Roxanne Johnson-Smith DAY PHONE: 402-981-5406  
ADDRESS: 2126 E Kanesville Blvd, Council Bluffs, IA 51503 DOB: 07-19-1957  
DATE & TIME OF LOSS/ACCIDENT: 06-22-2017, 12:01pm  
LOCATION OF LOSS/ACCIDENT: 227 S 6<sup>th</sup> Street, Council Bluffs 51503  
DESCRIPTION OF LOSS/ACCIDENT: Damage to personal vehicle on passenger side, IA license # DRN 731  
# 17-025334 (USE BACK OF FORM, IF NECESSARY)  
TOTAL DAMAGES CLAIMED: \$ approx \$3886.53 per body shop estimate  
WITNESS(ES) (Name(s), Address(es), Phone No(s)): Co Bluffs PD Officer Jeffrey Anderson

WAS POLICE REPORT FILED ☒ YES ☐ NO

IF MEDICAL ATTENTION WAS REQUIRED, PLEASE PROVIDE NAME, ADDRESS, AND TELEPHONE NO. OF TREATING PHYSICIAN AND FACILITY:  
N/A

HAVE YOU RESUMED NORMAL ACTIVITIES? ☒ YES ☐ NO

IF YOU INCURRED PROPERTY DAMAGE, PLEASE DESCRIBE AND PROVIDE COPIES OF ESTIMATES, INVOICES, PHOTOGRAPHS, AND ANY OTHER RELEVANT INFORMATION: just vehicle damage

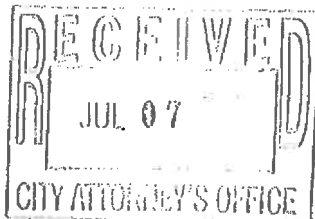
LIST INSURANCE PROVIDER AND COVERAGE:

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IN SUPPORT OF MY CLAIM IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

NOTE: IT IS A FRAUDULENT PRACTICE PUNISHABLE BY FINE OR IMPRISONMENT TO KNOWINGLY MAKE A FALSE CLAIM (SECTION 714.8(3) CODE OF IOWA)

07-07-2017  
DATE

Roxanne Johnson-Smith  
CLAIMANT'S SIGNATURE



CLERK RCV'D

7 JUL '17

PM3:03

Why do we have to spend our time 05 July 2017  
Cleaning up these peoples mess.

CLERK RCVD  
6 JUL 17  
PM 4:36

Petition to stop fireworks  
after 11:00pm  
and noise ordinance enforced and to  
take action by our city officials.

The undersigned agree to this ~~petition~~ <sup>petition</sup>  
And beg the city council and  
mayor of Council Bluffs  
to please enforce; we have  
rights also.

Floyd & Sharon Reid 2700 Ave L. C.B.  
Herald Thayer 2701 L  
Nicholas Quent 2731 AVE L CB  
Betsy (Hansner) Heiman 2728 ave L  
Marilyn Hart 1121 Ave 28<sup>th</sup> St.  
Dubi Wheeler 1121 Ave 28<sup>th</sup> St.  
Sonja Chambers 2741 AVE L  
Lany famer only big - apt 1200 - 2623 AVE L  
Dean C Bulman 1050 and 26<sup>th</sup> St  
Bell Hensley 2602 Ave L  
LORI DILTS 2620 AVE L  
James Van Ryp 2600 Ave L  
M. M. G. 2644 AVE L.  
Emily Bailey 2601 AVENUE L  
COURTNEY BAILEY 2601 AVENUE L  
Megan Bailey 2601 AVENUE L  
Randall Andrews 2732 Ave L  
Hemmes 2259 Ave L  
Dean Bailey 2601 Ave L, CB, Ia 51501  
Bert 2601 AVE L  
Kim Knodt 2648 AVE L

## Council Communication

Department: Public Works Admin  
Case/Project No.: PW18-20A  
Submitted by: Matthew Cox, City  
Engineer

Resolution 17-161

Council Action: 7/24/2017

### Description

Resolution approving the plans and specifications and authorizing the City Clerk to advertise for bids for the 28<sup>th</sup> Street Storm Sewer, Project # PW18-20A.

### Background/Discussion

West Broadway is major arterial street and critical to the City's roadway network. It serves as a significant commercial corridor and commuter route and its reconstruction is an essential part of the economic redevelopment plan for the west end of Council Bluffs. There is also a strong community desire to enhance the aesthetics of the corridor and to create a connection between the Riverfront and downtown Council Bluffs.

Segment 1 of the planned reconstruction is now underway and Segment 2 is in the design phase.

As part of the corridor reconstruction, drainage along West Broadway will now be collected through a series of curb inlets. The 28<sup>th</sup> Street Storm Sewer project will construct a new storm sewer from West Broadway south to 1<sup>st</sup> Avenue and tie into the existing 1<sup>st</sup> Avenue trunk sewer. This sewer will provide a connection for discharging the collected storm water.

Because Segment 2 is such a large project, completing all of the work in the 2018 construction season will be a challenge. The work associated with the 28<sup>th</sup> Street relief sewer was identified as a separate project that could be accomplished ahead of the West Broadway work.

This project is partnered with the West Broadway Reconstruction. As a condition of the Transfer of Jurisdiction, Iowa DOT has provided \$20 million in funding for assuming ownership of the roadway previously identified as US-6. The FY18 CIP also included \$1,500,000 in Sales Tax Funds.

The estimated construction cost for the project is \$500,000. The project will also include a water main relocation with costs paid by Council Bluffs Water Works.

The project schedule is as follows:

Letting	August 10, 2017
Award	August 28, 2017
Construction Start	Fall 2017

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

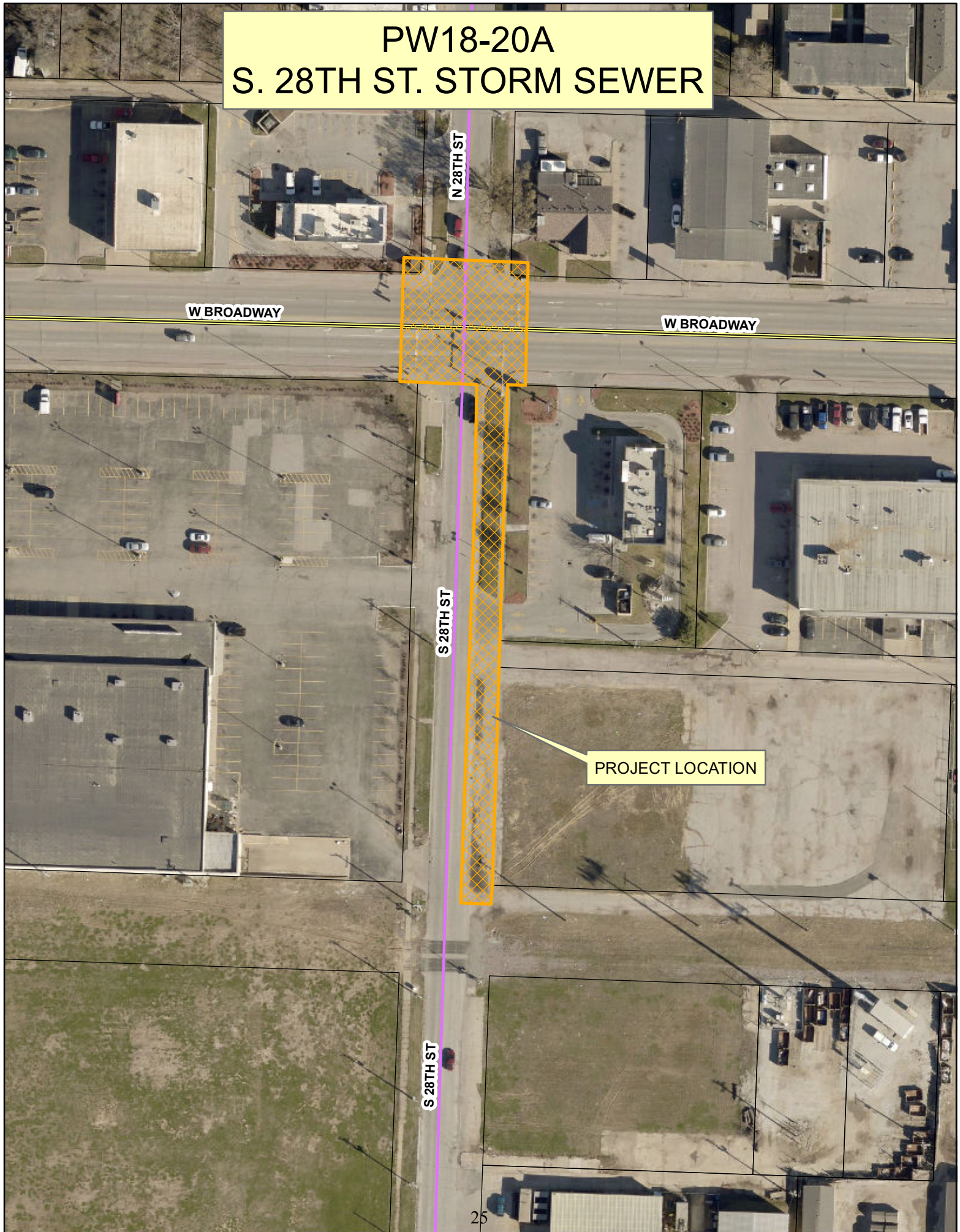
Description	Type	Upload Date
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Map  
Resolution 17-161

Map 7/13/2017  
Resolution 7/18/2017



PW18-20A  
S. 28TH ST. STORM SEWER



**RESOLUTION  
NO 17-161**

**RESOLUTION APPROVING THE  
PLANS, SPECIFICATIONS, FORM OF CONTRACT  
AND COST ESTIMATE FOR THE  
SOUTH 28<sup>TH</sup> STREET STORM SEWER  
PROJECT #PW18-20A**

WHEREAS, the plans, specifications, form of contract and cost estimate are on file in the office of the City Clerk of the City of Council Bluffs, Iowa for the 28<sup>th</sup> Street Storm Sewer; and

WHEREAS, A Notice of Public Hearing was published as required by law, and a public hearing was held on July 24, 2017.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

That the plans, specifications, form of contract and cost estimate are hereby approved for the 28<sup>th</sup> Street Storm Sewer Project and the City Clerk is hereby authorized to advertise for bids for said project.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the 1989 Local Option Sales Tax Ballot and as such this is an appropriate expenditure of the Local Option Sales Tax Revenues.

ADOPTED  
AND  
APPROVED

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk

## Council Communication

Department: Legal  
Case/Project No.:  
Submitted by: Legal Department

Ordinance 6300

Council Action: 7/24/2017

### Description

An ordinance to amend Title 8 “Public Safety and Morals” of the 2015 municipal code, by amending “Chapter 8.44.015 – Criminal Trespass”

### Background/Discussion

Amending this Chapter is requested by Lt. Darren Budd in response to the passing of legislation on general trespass.

Effective July 1, 2017, trespassing becomes a fine-able offense, not requiring a court appearance, per Iowa State Code 805.8C, subsection 11. The scheduled fine is \$200, \$500, or \$1000 for 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> offense respectively.

The amendment will bring our City Code up to date with the newly passed legislation.

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Current and Proposed language	Other	7/12/2017
Ordinance 6300	Ordinance	7/18/2017

Current Municipal Code

**8.44.015 - Criminal trespass.**

No person shall knowingly trespass upon the property of another.

Proposed Municipal Code

**8.44.015 - Criminal trespass.**

Any person who knowingly trespasses upon the property of another commits a simple misdemeanor punishable as a scheduled violation under Iowa Code Section 805.8C, subsection 11.

**ORDINANCE NO. 6300**

**AN ORDINANCE TO AMEND TITLE 8 “PUBLIC SAFETY AND MORALS” OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY AMENDING “CHAPTER 8.44.015 – CRIMINAL TRESPASS”.**

**BE IT ORDAINED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

**SECTION 1.** That Title 8 “Public Safety and Morals” of the 2015 Municipal Code of Council Bluffs, Iowa, is hereby amended “Chapter 8.44.015 – Criminal trespass” to read as follows:

**CHAPTER 8.44.015 – Criminal trespass.**

Any person who knowingly trespasses upon the property of another commits a simple misdemeanor punishable as a scheduled violation under Iowa Code Section 805.8C, subsection 11.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 3. SEVERABILITY CLAUSE.** If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED  
AND \_\_\_\_\_, 2017.  
APPROVED

\_\_\_\_\_  
MATTHEW J. WALSH

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
JODI QUAKENBUSH

\_\_\_\_\_  
City Clerk

First Consideration: 7/24/2017  
Second Consideration: 8/14/2017  
Public Hearing: N/A  
Third Consideration: \_\_\_\_\_

## Council Communication

Department: Community

Development

Case/Project No.: ZC-17-002

Submitted by: Chris Meeks

Ordinance 6301

Council Action: 7/24/2017

### Description

Ordinance to amend the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.070 of the 2015 Municipal Code of Council Bluffs, Iowa, by rezoning Lots 259 and 260 Belmont Addition, and north half of a vacated alley from R-1/Single-Family Residential District to C-2/Commercial District as defined in Chapter 15.15 of the Municipal Code of Council Bluffs, Iowa.

### Background/Discussion

The Community Development Department has received an application from William Hargens, on behalf of Barbara Williamson (property owner), to rezone properties legally described as Lots 259 and 260, Belmont Addition, and the North Half of an adjacent vacated alleyway from R-1/Single Family Residential District to C-2/Commercial District. The applicant proposes to build a new storage building for personal use on the lots if the rezoning is approved.

The following attachments are included with the case staff report:

1. Attachment A: Location/Zoning Map of the Subject Properties
2. Attachment B: Letter of Intent
3. Attachment C: Site Photos
4. Attachment D: Building Renderings and Site Plan

### Rezoning (Case #ZC-17-002)

The subject property (Lots 291-294, Lots 259-260, and a portion of a vacated alleyway, Belmont Addition) is comprised of .74 acres of land that is zoned C-2/Commercial District South of the vacated alleyway, and R-1/Single Family Residential District North of the alleyway (see Attachment A). Surrounding zoning consists of R-1/Single Family Residential District, and C-2/Commercial District. Surrounding land uses include property to the south and west that is owned by the Council Bluffs Community School District, single family dwellings to the north and east, as well as a business to the east. The proposed storage building would be located on lots 259 and 260, Belmont Addition, which would be divided from the lots to the south. The proposed storage building is allowed in the C-2/Commercial District as a permitted use. The future land use plan of the Bluffs Tomorrow: 2030 Plan designates the subject property as Low-Density Residential, which would include areas of attached or detached single family or multi-family residential developments.

Public notices were mailed to all property owners within 200 feet of the request. No adverse comments were received for the request.

All City department and local utilities were notified of the proposed rezoning. No adverse comments were received for the request.

Chief Building Official Steve Carmichael did advise that his department would be unable to approve a building permit without the removal of the property line between lots 259 and 260, Belmont Addition, or the implementation of a fire wall in the building on that lot line.



## **Recommendation**

The Community Development Department finds the requested rezoning to be inconsistent with the Bluffs Tomorrow: 2030 Plan (comprehensive plan) and recommends denial of the request based on the following findings.

1. Based on the Land Use Plan's designation of the area as Low Density Residential, the approval of this zoning text amendment would not be consistent with the established goals and policies.
2. The C-2/Commercial District Statement of Intent designates the district to provide for major commercial retail shopping and service areas adjacent to major traffic corridors. This district also is to provide for a variety of commercial services for the community and adjacent residential neighborhoods. The proposed use would not provide any service to the adjacent residents, nor is the area located on a major traffic corridor. For these reasons, the use would not be consistent with the intent of the zoning district.
3. While there are currently commercially zoned parcels adjacent to the proposal (to the south) a majority of the area is zoned R-1/Residential, meaning that the approval would allow for an inconsistent use to encroach on established neighborhoods.

### **Public Hearing**

Speakers in favor:

1. Bill Hargens, 70 Crestwood Drive, Council Bluffs, IA 51503

Speakers against: None.

### **Planning Commission Recommendation**

The Planning Commission finds the requested rezoning to be inconsistent with the Bluffs Tomorrow: 2030 Plan (comprehensive plan) and recommends denial of the request based on the following findings.

1. Based on the Land Use Plan's designation of the area as Low Density Residential, the approval of this zoning text amendment would not be consistent with the established goals and policies.
2. The C-2/Commercial District Statement of Intent designates the district to provide for major commercial retail shopping and service areas adjacent to major traffic corridors. This district also is to provide for a variety of commercial services for the community and adjacent residential neighborhoods. The proposed use would not provide any service to the adjacent residents, nor is the area located on a major traffic corridor. For these reasons, the use would not be consistent with the intent of the zoning district.
3. While there are currently commercially zoned parcels adjacent to the proposal (to the south) a majority of the area is zoned R-1/Residential, meaning that the approval would allow for an inconsistent use to encroach on established neighborhoods.

VOTE: AYE 8 NAY 2 ABSTAIN 0 ABSENT 1 Motion: Carried

## **ATTACHMENTS:**

Description	Type	Upload Date
Public Hearing Notice	Other	7/14/2017
Attach A, B, C and D	Other	7/14/2017
Ordinance 6301	Ordinance	7/18/2017

## **NOTICE OF PUBLIC HEARING**

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a Public Hearing on an ordinance to amend the zoning map as adopted by reference in Section 15.02.070, by rezoning the following:

Lots 259 and 260, Belmont Addition from R-1/Single Family Residential District to C-2 Commercial District as defined in Chapter 15.15 of the Municipal Code.

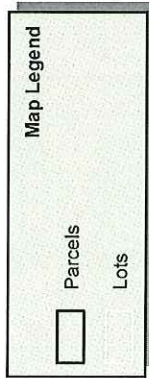
You are further notified that the Public Hearings on said matters will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m., on the 14<sup>th</sup> day of August, 2017, in the City Council Chambers, 2<sup>nd</sup> Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

---

Jodi Quakenbush, City Clerk



# CITY OF COUNCIL BLUFFS - CITY PLANNING COMMISSION LOCATION/ZONING MAP CASE # ZC-17-002



0 55 110  
1 Inch = 105 Feet

2016 Aerial Photograph



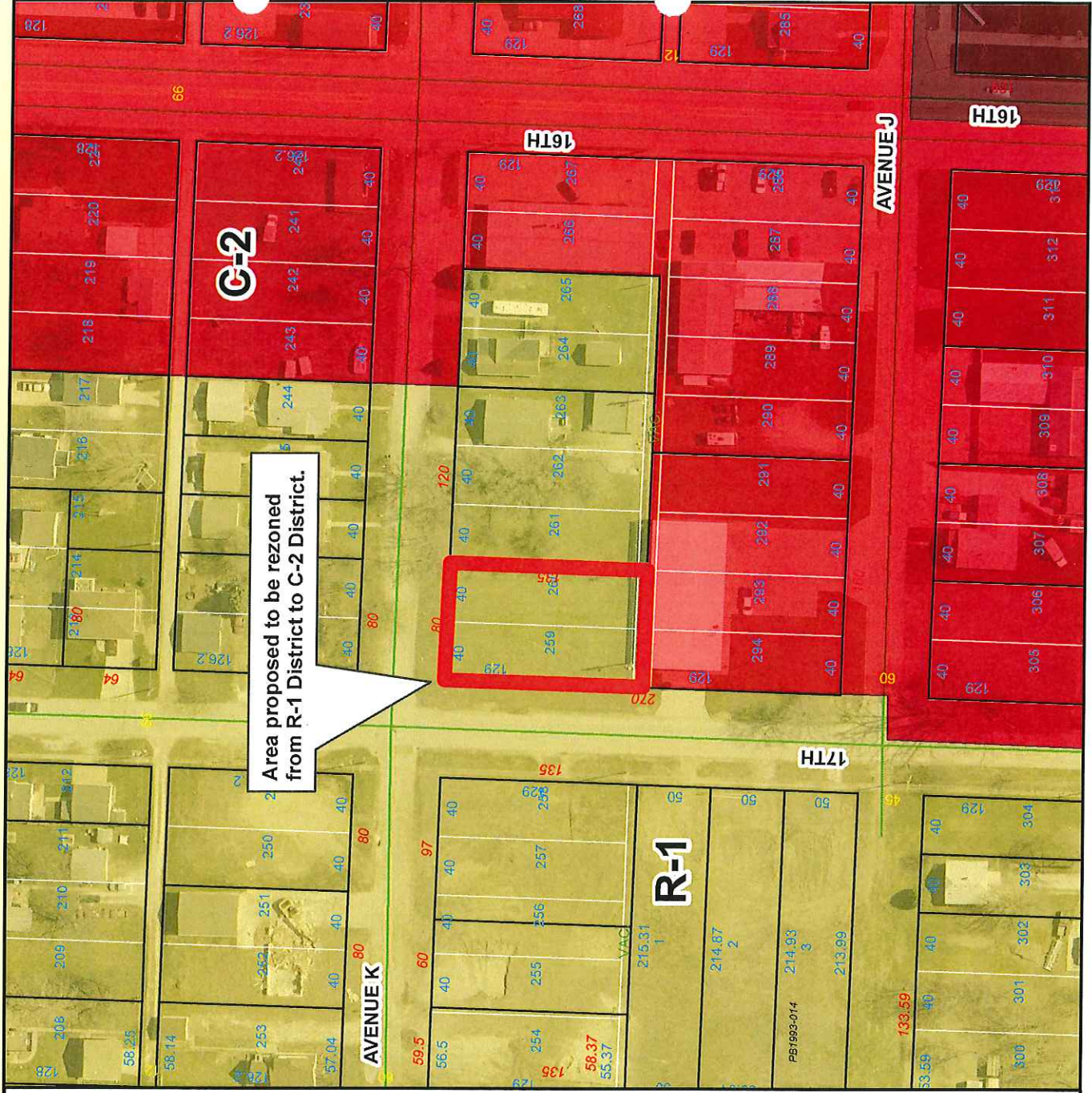
Note: Subject properties are highlighted in red.



Last Amended: 6/19/17

**DISCLAIMER**  
This map is prepared and compiled from City documents, photographs and other public information. It is not intended to be a survey or to be used for legal purposes. The City of Council Bluffs disclaims any liability for any errors or omissions in this map. The user of this map is responsible for the information contained in this map.

**Council Bluffs Community Development Department**  
209 Pearl Street  
Council Bluffs, IA 51503  
Telephone: (712) 328-4629



Attachment B- Letter of Intent

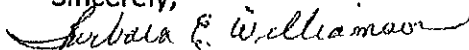
BILL HARGENS  
6-15-17

To whom it may concern:

I am writing this letter to let the city council and the different departments of the city my approval of Bill Hargens in representing me in the approval of him buying my vacant lot and wanting the city to change my lot from residential to commercial. I want the city to know all my tax papers say commercial from day one of owning this property. Therefore I have been paying the higher taxes on this piece of property.

After seeing his plans for this property, what an improvement to that street and the landscape the soccer people would be seeing. I know he will be a good neighbor for me and the residents on the street.

Sincerely,



Barbara E. Williamson

Pac Tech



### Attachment C: Site Photos



-The subject property. (Taken from the Northwest corner)



-Athletics complex to the West of the proposal.

-Location of the entrance to the athletics complex to the Southwest.



A large, light-colored barn with a white picket fence in the foreground and a blue sky with clouds in the background. The barn has a gabled roof and a large wooden door. The fence is white and runs along the front of the property. There are some small trees and bushes in front of the barn. The sky is blue with white clouds.





**ORDINANCE NO. 6301**

**AN ORDINANCE TO AMEND THE ZONING MAP OF THE CITY OF COUNCIL BLUFFS, IOWA, AS ADOPTED BY REFERENCE IN SECTION 15.02.070 OF THE 2015 MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA, BY REZONING LOTS 259 AND 260 BELMONT ADDITION, AND NORTH HALF OF A VACATED ALLEY FROM R-1/SINGLE-FAMILY RESIDENTIAL DISTRICT TO C-2/COMMERCIAL DISTRICT AS DEFINED IN CHAPTER 15.15 OF THE MUNICIPAL CODE OF COUNCIL BLUFFS, IOWA.**

**BE IT ORDAINED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

**SECTION 1.** That the Zoning Map of the City of Council Bluffs, Iowa, as adopted by reference in Section 15.02.070 of the 2015 Municipal Code of the City of Council Bluffs, Iowa, be and the same is hereby amended to Rezone Lots 259 and 260 Belmont Addition, and North Half of a vacated alley from R-1/Single-Family Residential District to C-2/Commercial District.

**SECTION 2. REPEALER.** All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 3. SEVERABILITY CLAUSE.** If any of the provisions of this ordinance are for any reason declared illegal or void, then the lawful provisions of this ordinance which are severable from said unlawful provisions shall be and remain in full force and effect, the same as if the ordinance contained no illegal or void provisions.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its final passage and publication, as by law provided.

PASSED  
AND \_\_\_\_\_, 2017.  
APPROVED

\_\_\_\_\_  
MATTHEW J. WALSH

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
JODI QUAKENBUSH

\_\_\_\_\_  
City Clerk

First Consideration: 7/24/2017  
Second Consideration: 8/14/2017  
Public Hearing: 8/14/2017  
Third Consideration: \_\_\_\_\_

Planning Case No. #ZC-17-002

## Council Communication

Department: City Clerk  
Case/Project No.:  
Submitted by: Jon Finnegan

Resolution 17-144

Council Action: 7/24/2017

### Description

Resolution accepting settlement between the Iowa Insurance Division and Two Rivers Insurance Company.  
(Postponed from July 10, 2017)

### Background/Discussion

As you may recall, we advised you last August that the Iowa Insurance Division invited the mayor, chief of staff, and director of HR to a meeting in Des Moines regarding their investigation of Two Rivers Insurance. Since that time, they have settled the investigation with Two Rivers, and have sent us communication of the same.

Attached are the Insurance Division's letter to Mayor Walsh advising that they have settled their investigation, and the Order and Consent to Order that was filed in the matter.

As a summary, the parties have agreed to a settlement amount, and the insurance division has determined an allocation of the settlement to all of the parties in IGHCP. The portion allotted to the City of Council Bluffs is \$253,428.10, and the portion allotted to the Council Bluffs Public Library is \$8,201.95.

We have two options at this point in time; 1. accept our allotted portion of the restitution, and release Two Rivers Insurance from liability for any civil claims or penalties in connection with the conduct as described in the Order, or 2. not accept the restitution amount, and retain the right to pursue Two Rivers Insurance for any losses we may claim on our own.

It is our recommendation that we choose the first of those two options, accepting the restitution. The primary reasons for that recommendation are:

1. We paid the exact dollar amount Two Rivers advised us we would pay for the insurance coverage we received. They didn't necessarily break it out in detail the way the insurance division claims they should have, but we knew the amount we were paying, and 2. We saved almost \$1.5 Million the first year we signed on with them compared with the renewal we had from our previous provider, and we have been on the IGHCP insurance plan for 9 years. So, not only did we save that money year one and every year since, we believe it would be difficult to prove we had "losses," which is what would be required for us to prevail in any civil pursuit on our own.

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Letter to Mayor	Letter	6/16/2017
Order and Consent to Order	Other	6/16/2017
Resolution 17-144	Resolution	7/3/2017



# STATE OF IOWA

TERRY E. BRANSTAD  
GOVERNOR

KIM REYNOLDS  
LT. GOVERNOR

DOUG OMMEN  
COMMISSIONER OF INSURANCE

May 22, 2017

Matt Walsh  
209 Pearl St.  
Suite 104  
Council Bluffs, Iowa 51503  
[mayor@councilbluffs-ia.gov](mailto:mayor@councilbluffs-ia.gov)

**VIA CERTIFIED MAIL AND  
ELECTRONIC MAIL**

RE: *In the matter of Two Rivers Insurance Company*  
Case No. 82465

Dear Mayor Walsh,

The Iowa Insurance Division ("Division") has concluded its investigation into Two Rivers Insurance Company, Inc. ("Two Rivers") arising from their billing practices for the Iowa Governmental Health Care Plan ("IGHCP"). The Division and Two Rivers entered into a Consent Order ("Order") on May 22, 2017 after several months of negotiations. A copy of the Order is attached for your reference. The Order is a matter of public record and is published on the Division's website at <https://iid.iowa.gov/enforcement-orders-and-actions>.

The Division alleged that Two Rivers developed and charged fees and commissions that were not disclosed to the members of IGHCP. Specifically, Two Rivers listed an inflated "premium" amount on annual summaries and monthly billings which consisted of not only the Wellmark established premium (which already included a 1 or 1.5% commission) but also included undisclosed fees and commissions charged by Two Rivers. These undisclosed fees and commissions were in addition to the disclosed EBS billing and partial self-funding fees Two Rivers charged each member and listed on the billing statements.

The Division alleged that these acts are in violation of Iowa Code § 507B.3, which prohibits a person from engaging in unfair methods of competition, or unfair or deceptive acts or practices, and Iowa Code § 522B.11, which prohibits violations of any insurance law and using dishonest practices or demonstrating untrustworthiness in the conduct of business in this state. By presenting these fees and commissions as "premiums," the billing statements and rate summaries had the capacity to mislead the IGHCP members into believing that this amount was the insurer-established (Wellmark) premium, when it in fact included undisclosed compensation to Two Rivers.

### **Impact on Future Two Rivers Billing Practices**

As part of the Order, Two Rivers agreed to a cease and desist order that it will not engage in any of the following acts or practices related to IGHCP:

1. Adding Two Rivers' compensation to an insurer-established premium and representing such monetary amount as "premium" on rate summaries or on monthly billings.
2. Failing to separately disclose or itemize Two Rivers' fees or compensation apart from the insurer-established premium, to the extent they are included, on rate summaries or on monthly billings.

The Order does not prohibit Two Rivers from using an insurer-established premium to structure a partial-self funding plan, so long as the insurer-established premium, partial self-funding contributions, and any compensation apart from the insurer-established premium are disclosed as separate line items to the extent they are included on rate summaries and on monthly billings.

### Restitution

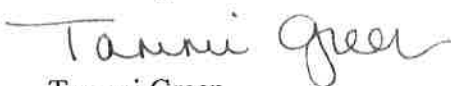
Two Rivers is required to pay a sum of \$1,314,029.10 to the state of Iowa as restitution to be distributed to past and current IGHCP members. Member specific restitution amounts were calculated by taking the total amount of undisclosed fees and commissions charged by Two Rivers to the specific member and reducing this number to allow for a percentage commission to Two Rivers. We then applied a uniform percentage to each member's specific undisclosed amount to arrive at individual restitution amounts for each member. City of Council Bluffs has been apportioned \$253,428.10 in restitution. Council Bluffs Public Library has been apportioned \$8,201.95 in restitution.

In order to receive restitution, **your entity must agree to and have the designated authorized representative for your city/school/county sign** the *Election to Participate and Release*, which is attached as Exhibit B to the Order. Should your entity elect to not sign the *Election to Participate and Release*, the funds allotted to your entity will be redistributed to the entities that do elect to participate. This means that the member specific restitution amount noted in the above paragraph could increase if not all members elect to participate. We ask that you carefully review the *Election to Participate and Release* and share it along with this letter with all required decision makers, such as a board of superintendents, Mayor, or county attorney, within your entity.

If your entity elects to participate, the signed and completed *Election to Participate and Release* must be sent to the attention of the undersigned and received by the Division **no later than 4:00 p.m. on August 20, 2017**. Please also advise, on separate correspondence, the name of the proper payee and mailing address for the restitution check that will be issued by the Division subsequent to the closing of the election period. As with the Order, your decision to participate or not participate will also be subject to public disclosure.

Please refer to the enclosed example *Election to Participate and Release* which may provide you with guidance in completing the form should your entity elect to participate. If you have any questions or concerns regarding the investigation, Order, or restitution process, please contact Tammi Green at 515.281.4005 or [tammi.green@iid.iowa.gov](mailto:tammi.green@iid.iowa.gov).

Sincerely,



Tammi Green  
Enforcement Bureau



**Enclosures:**

Final Consent Order

Blank *Election to Participate and Release*

Example *Election to Participate and Release*

**Copy to:**

Jon Finnegan

209 Pearl St.

Suite 301

Council Bluffs, IA 51503

[jfinnegan@councilbluffs-ia.gov](mailto:jfinnegan@councilbluffs-ia.gov)

Whitney Schultz

209 Pearl St.

Suite 104

Council Bluffs, IA 51503

[wschultz@councilbluffs-ia.gov](mailto:wschultz@councilbluffs-ia.gov)

Douglas Ommen

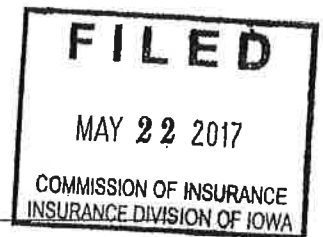
Iowa Insurance Commissioner

Johanna Nagel

Compliance Attorney for the Division

Jennifer Lindberg

Compliance Officer



BEFORE THE IOWA INSURANCE COMMISSIONER

---

IN THE MATTER OF	)	Division File No. 82465
	)	
TWO RIVERS INSURANCE COMPANY, INC.	)	<b>ORDER AND</b>
NPN 3274643,	)	<b>CONSENT TO ORDER</b>
d/b/a Two Rivers Insurance Services,	)	
and Employee Benefit Systems;	)	
	)	
Respondent.	)	

---

**NOW THEREFORE**, upon motion of the Iowa Insurance Division (“Division”) and consent of Respondent Two Rivers Insurance Company, Inc., pursuant to the provisions of Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers, the Commissioner enters the following consent order (“Order”):

**I. PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Doug Ommen, administers Iowa Code Chapter 507B—Insurance Trade Practices and Iowa Code Chapter 522B—Licensing of Insurance Producers pursuant to Iowa Code § 505.8. The Commissioner has designated staff in the Iowa Insurance Division to seek enforcement of these provisions. The Division has consented to the entry of this Order.
2. Two Rivers Insurance Company, Inc. (“Two Rivers”) is an Iowa corporation with a home office of 214 N. Main Street, Burlington, Iowa 52601. Two Rivers does business under several fictitious names, including, but not limited to “Two Rivers Insurance Services” and “Employee Benefit Systems.” Two Rivers has filed fictitious name registrations with the Iowa Secretary of State to do business under these names.

3. Two Rivers d/b/a Two Rivers Insurance Services is and has been licensed as a business entity insurance producer with the Division since October 29, 2010. Two Rivers is licensed under national producer number 3274643.
4. Two Rivers d/b/a Employee Benefit Systems is and has been licensed as a third party administrator with the Division since January 21, 2000.
5. The Commissioner of Insurance has jurisdiction over Two Rivers and this matter.
6. The Division has alleged that from January 1, 2005 to on or about May 1, 2014 (“2005 through 2014”), Two Rivers and others engaged in acts or practices constituting cause for probation, suspension, revocation, fines, orders requiring such persons to cease and desist from the acts, methods or practices, or other relief under Iowa Code §§ 505.8(10), 507B.3, 507B.4, 507B.6, 507B.7, 522B.11 and 522B.17 and rules adopted pursuant to Iowa Code Chapters 505, 507B and 522B.
7. Two Rivers is aware of its right to notice and a hearing on this matter, the right to be represented by counsel at a hearing, the right to present evidence and examine witnesses at a hearing, and the right to appeal from any adverse determination after a hearing. Two Rivers, by consenting to this Order, knowingly and voluntarily waives these rights, including all rights to appeal or otherwise contest the validity of this Order.
8. Two Rivers, by its officers and attorneys, knowingly and voluntarily enters into this Order. Two Rivers denies the allegations found herein and denies that it has engaged in any unlawful acts or practices.

## **II. STIPULATIONS OF FACT**

9. In 2005, several public entities organized the Iowa Governmental Health Care Plan (“IGHCP”) under Iowa Code Chapter 28E. IGHCP was an agreement to pool risk for health and other welfare benefits as an insurance purchasing group of Iowa public employers.

10. Through the efforts of Two Rivers and others, Wellmark, Inc. began writing health insurance coverage for IGHCP from its inception. Wellmark, Inc. (“Wellmark”) is a mutual insurance company that was incorporated under the laws of the state of Iowa on September 14, 1939. Wellmark is authorized by the insurance commissioner to issue individual and group health insurance. Wellmark’s group health insurance plans are governed by various insurance laws including Iowa Code Chapter 509.

## **III. DIVISION’S ALLEGATIONS**

11. Wellmark is required by Iowa Code § 432.1 to report to the state of Iowa gross premiums received during the preceding calendar year in order to determine premium tax liability. Wellmark filed premium tax returns for each of the years of 2005 through 2014, annually reporting gross direct written premium.

12. In establishing premiums for IGHCP, Wellmark established an initial premium for each member through the use of actuarial standards.

13. On an annual basis thereafter, Wellmark established premium rates for IGHCP for each renewal plan year from 2006 through 2014. A plan year for IGHCP ran from July 1 of any given year to June 30 of the subsequent year.

14. To facilitate the IGHCP yearly insurance renewals, Two Rivers received up to twenty plans from Wellmark each year. Two Rivers then structured approximately three times as many plans with various levels of self-funding dependent upon the needs of each IGHCP member.

15. From the years 2005 through 2013, Mutual Med Insurance Services, LLC (“Mutual Med”) was the wholesale agency for Wellmark. Wellmark required Two Rivers to operate through a wholesaler to receive Wellmark plans. Wellmark’s premiums included commission of 1%. For the time period of 2005 through approximately July 2013, Two Rivers did not receive any portion of the commission paid to Mutual Med. In approximately July 2013, Mutual Med negotiated an increase in the commission percentage and forwarded .25% of its commission to Two Rivers. Mutual Med was terminated by Wellmark as the wholesale agency effective approximately October 1, 2013 and Two Rivers then received all of the commission that previously went to Mutual Med until approximately March 2014. Two Rivers held, in a separate ledger account, both the .25% received from Mutual Med and the full commission received after Mutual Med’s termination pending advice.

16. Two Rivers added compensation, whether described internally as “EBS billing fee” or “Commission to Two Rivers,” to Wellmark’s premium rates for each member of the IGHCP for each plan year from 2005 until April 2014.

17. During the years of 2005 through 2014 Two Rivers’s compensation was totaled with Wellmark rates and then presented to each member of IGHCP on rate summaries on an annual basis and on monthly billings in various ways as premium (e.g. “insurance company premium,” “medical premium,” or “IGHCP Premium”). Two Rivers did not separately itemize or disclose its fees and/or commissions in the materials provided to IGHCP members.

**COUNT I**  
**Iowa Code § 507B.3**

18. Iowa Code § 507B.3 provides:

A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.

19. Iowa Code § 507B.6 provides:

Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

20. Iowa Code § 507B.7(1) provides that upon determining that a person has engaged in an unfair method of competition or an unfair or deceptive act or practice, the Commissioner shall order the person to cease desist and may order a civil penalty not to exceed ten thousand dollars, unless the person knew or should have known that they were in violation of this subtitle, in which case the penalty may not exceed fifty thousand dollars in any six-month period.

21. Iowa Code § 505.8(10) provides:

The commissioner may, after a hearing conducted pursuant to chapter 17A, assess fines or penalties; assess costs of an examination, investigation, or proceeding; order restitution; or take other corrective action as the commissioner deems necessary and appropriate to accomplish compliance with the laws of the state relating to all insurance business transacted in the state.

22. The Division has alleged that during the period of 2005 through 2014, Two Rivers engaged in unfair and deceptive acts and practices in violation of Iowa Code § 507B.3 by presenting various monetary amounts as “premium” on rate summaries provided on an annual basis and on monthly billings to each of the members of IGHCP that, in fact, included Wellmark premium rates plus Two Rivers’ compensation and that such representations had the capacity to mislead members into believing the presented amounts were entirely premium established by Wellmark and concealed the amounts of Two Rivers’ compensation.

23. Violations of Iowa Code § 507B.3 and applicable rules as alleged would constitute grounds for the imposition of a civil penalty, an order of restitution, and an order requiring such person to cease and desist from the unfair and deceptive acts, methods or practices pursuant to Iowa Code §§ 507B.6 and 507B.7.

**COUNT II**  
**Iowa Code § 522B.11**

24. Iowa Code § 522B.11(1) provides:

The commissioner may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty as provided in section 522B.17 for any one or more of the following causes:

\*\*\*

*b.* Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of a commissioner of another state.

\*\*\*

*h.* Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

25. Iowa Code § 522B.17(1) provides:

An insurer or insurance producer who, after hearing, is found to have violated this chapter may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty pursuant to chapter 507B.

26. The Division has alleged that during the period of 2005 through 2014, Two Rivers violated Iowa Code §§ 522B.11(1)(*b*) and (*h*) in the conduct of business in this state by adding compensation to the Wellmark premiums and presenting the increased dollar amounts to members of IGHCP as “premium.”

27. Violations of Iowa Code § 522B.11(1) and applicable rules as alleged would constitute grounds for revocation, suspension, censure, the imposition of a civil penalty, an order of restitution, and an order requiring such person to cease and desist from the unfair and deceptive acts, methods or practices pursuant to Iowa Code §§ 522B.11, 522B.17, 507B.6 and 507B.7.

#### **IV. AGREED CEASE AND DESIST ORDER**

Two Rivers, consents to entry of a voluntary cease and desist order and, prior to the entry of this Order, changed the practices at issue in this Order by disclosing the amount of the Wellmark-established premiums and by entering into consulting agreements with members of IGHCP in order to charge and disclose fees for Two Rivers' services.

**NOW THEREFORE, IT IS ORDERED** that Two Rivers Insurance Company, Inc., and its officers, directors, agents and representatives, shall not engage in any act or practice in violation of Iowa Code §§ 507B.3 and 507B.6 and shall not engage in the following practices:

- A. Adding Two Rivers' compensation to an insurer-established premium and representing such monetary amount as "premium" on rate summaries or on monthly billings provided to members of IGHCP, or using any similar representations or formats that have a capacity to mislead members into believing the represented amounts are entirely premium established by the insurer; and
- B. Failing to separately disclose or itemize Two Rivers' fees or other compensation, apart from the insurer-established premium, to the extent they are included on rate summaries or on monthly billings provided to members of IGHCP.

This Order does not prohibit Two Rivers from using an insurer-established premium to structure partial self-funding plans so long as the insurer-established premium; any partial self-funding contributions; and any commissions, fees or other compensation apart from the insurer-established premium are disclosed as separate line items to the extent they are included on rate summaries and on monthly billings.



## **V. RESTITUTION**

**IT IS FURTHER ORDERED** that Two Rivers Insurance Company, Inc. shall pay contemporaneous with its consent to this order the amount of \$1,314,029.10 to the state of Iowa to the credit of the Settlement Fund of the Iowa Insurance Division, as restitution to be distributed to past and current IGHCP members in accordance with the allocations in Exhibit A, attached and incorporated herein.

As a condition of receiving the allocated restitution, the IGHCP member must agree to sign the Election to Participate and Release which is attached as Exhibit B and incorporated herein by reference. If the IGHCP member does not sign the Election to Participate and Release, the allocated restitution sum will be distributed amongst the participating members. The Division will notify the IGHCP members of this within thirty (30) days of the issuance of this Order. IGHCP members will have sixty (60) days following the notification period to return the signed Election to Participate and Release to the Division.

## **VI. RIGHT TO REOPEN**

**IT IS FURTHER ORDERED** that the Division's agreement to, and the Commissioner's issuance of, this Order, is expressly premised upon the truthfulness, accuracy, and completeness of the Two Rivers's representations concerning its ability to pay a financial penalty, including a restitution amount. If, upon motion by the Division, the Commissioner finds that Two Rivers failed to disclose material assets, misrepresented the value of any asset, or made other material misrepresentations or omissions, this matter may be reopened for the purpose of assessing additional restitution amounts and civil penalties.


## VII. RELEASE

**IT IS FURTHER ORDERED** that upon finalization of this Order and payment of the required funds, the Division, and the Commissioner, acknowledge that this Order releases the Respondent, Two Rivers Insurance Company, Inc., its current and former board members, directors, officers, employees, with the express exception of Kerry Erts, Scott Saveraid, and Kevin Carr, from liability for any additional civil or administrative penalties or actions by the Commissioner, the Division, or the staff of the Division in connection with Two Rivers's billing practices relating to fees, commissions, or other compensation charged to groups organized under 28E agreements and any conduct and violations of Iowa insurance laws as described in this Order.

Upon finalization of this Order and payment of the required funds, the Division and the Commissioner, acknowledge that this Order releases Two Rivers Financial Group, Two Rivers Bank & Trust, and Two Rivers's successors from liability for any additional civil or administrative penalties or actions by the Commissioner, the Division, or the staff of the Division in connection with Two Rivers's billing practices relating to fees, commissions, or other compensation charged to groups organized under 28E agreements and any conduct and violations of Iowa insurance laws as described in this Order.

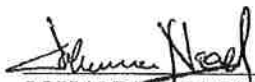
This Order does not release Respondent from civil or criminal liabilities, if any, that may be asserted by any other governmental entity.

SO ORDERED on this 22<sup>nd</sup> day of May, 2017.



DOUGLAS M. OMMEN  
Iowa Insurance Commissioner

Respectfully submitted,



JOHANNA NAGEL

Compliance Attorney

Iowa Insurance Division

Two Ruan Center

601 Locust Street, 4<sup>th</sup> Floor

Des Moines, IA 50309

johanna.nagel@iid.iowa.gov

515.725.1255

**Attorney for the Iowa Insurance Division**

Copies to:

Michael Richards

Davis Brown Law Firm

215 10<sup>th</sup> Street, Suite 1300

Des Moines, IA 50309

Susan Freed

Davis Brown Law Firm

215 10<sup>th</sup> Street, Suite 1300

Des Moines, IA 50309

Sarah Crane

Davis Brown Law Firm

215 10<sup>th</sup> Street, Suite 1300

Des Moines, IA 50309

**Attorneys for Respondent**

### CONSENT TO ORDER AND AGREEMENT

I, Todd M Ackerman as president and on behalf of Two Rivers Insurance Company, Inc., Respondent in this matter, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that Two Rivers Insurance Company, Inc. is waiving its rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22 that will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that the Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against me.

Dated this 15<sup>th</sup> day of May, 2017.

TWO RIVERS INSURANCE COMPANY, INC.

By: 

Subscribed and sworn before me on this 15 day of May, 2017.

Heather Marie Howell  
Notary Public for the State of Iowa



## EXHIBIT A

Central Lee (w/PSF)	\$ 41,023.73
Chickasaw Co.	1,876.72
City of Clive	32,856.94
City of Council Bluffs	253,428.10
City of Fairfield	28,315.60
City of Grinnell	3,273.67
City of Harlan	21,321.00
City of Keokuk	53,247.26
City of Pella	25,835.43
City of Perry	8,878.00
City of Spencer	20,330.70
City of Waukee	25,541.47
City of Waverly	1,981.12
City of Webster City	9,823.98
Clay County	35,480.28
Clayton County	35,670.11
Council Bluffs Public Library	8,201.95
Council Bluffs Waterworks	24,511.65
Dubuque County	11,894.56
Emmet County	21,094.58
Grundy County	52,322.10
Guthrie County	21,551.95
Hancock County	50,994.04
Henry County	63,502.99
Humboldt County	43,395.22
Jefferson County	37,586.91
Keokuk CSD	135,315.05
Monona County	18,725.22
Pottawattamie County	143,356.02
Seymour CSD	18,374.12
Spencer CSD	50,551.36
Union County	8,054.57
Winnebago County	5,712.71
Total	<u>\$ 1,314,029.10</u>

**NOTE:** The above-reference amounts are subject to change with the amounts going up should a listed member decline to participate.

**EXHIBIT B**

**ELECTION TO PARTICIPATE AND RELEASE**

I, \_\_\_\_\_, as \_\_\_\_\_(position)\_\_\_\_\_ and on behalf of \_\_\_\_\_(entity name)\_\_\_\_\_ elect to participate in the distribution of the restitution amount ordered pursuant to the consent order ("Order") entered into by the Iowa Insurance Division and Two Rivers Insurance Company, Inc., on \_\_\_\_\_, 2017 regarding matter number 82465.

By executing this election and receiving a payment for restitution, \_\_\_\_\_(entity)\_\_\_\_\_ agrees to release Two Rivers Insurance Company, Inc., its current and former board members, directors, officers, employees, with the express exception of Kerry Erts, Scott Saveraid, and Kevin Carr, from liability for any civil claims or penalties in connection with Two Rivers's conduct as described in the Order. \_\_\_\_\_(entity)\_\_\_\_\_ further agrees to release Two Rivers Financial Group, Two Rivers Bank & Trust, and Two Rivers Insurance Company, Inc.'s successors from liability for any civil claims or penalties in connection with Two Rivers's conduct as described in the Order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
(ENTITY NAME)

By (\*)

Subscribed and sworn before me on this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public for the State of Iowa



RESOLUTION NO. 17-144

A resolution authorizing the Mayor to execute the ELECTION TO PARTICIPATE AND RELEASE documents for the City of Council Bluffs, and the Council Bluffs Public Library in the Iowa Insurance Division Matter #82465.

WHEREAS, the Iowa Insurance Division and Two Rivers Insurance Company have reached a settlement; and,

WHEREAS, the Insurance Division has determined an allocation of that settlement for the City of Council Bluffs, and the Council Bluffs Public Library; and,

WHEREAS, said election to participate and release is deemed to be in the best interest of the City of Council Bluffs, Iowa;

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA:

The Mayor is authorized to execute the ELECTION TO PARTICIPATE AND RELEASE documents for the City of Council Bluffs, and the Council Bluffs Public Library.

Adopted  
And  
Approved

July 10 2017

\_\_\_\_\_  
Matthew Walsh Mayor

Attest \_\_\_\_\_  
Jodi Quakenbush City Clerk



## Council Communication

Department: Finance

Case/Project No.:

Submitted by: Kathryn Knott

Resolution 17-162 A & B

Council Action: 7/24/2017

### Description

17-162A, Resolution appointing Bankers Trust Company of Des Moines, Iowa, to serve as paying agent, bond registrar, and transfer agent, approving the paying agent and bond registrar and transfer agent agreement and authorizing the execution of the agreement

17-162B, Resolution incorporating prior bond issuance approvals on March 27, 2017 and June 12, 2017 all into one issuance with the proceeds being separately accounted for, approving the issuance of \$9,540,000 General Obligation Bonds, Series 2017A, and levying a tax for the payment thereof and approving the Tax Exemption Certificate and Continuing Disclosure Certificate

### Background/Discussion

17- A

When the City sells Bond Debt it appoints the Trust Department of a Bank qualified to handle transactions for administration of the bonds. These transactions would include closing the transaction and receiving the money from the bond buyer, monitoring and collecting timely principal and interest payments from the City to assure proper payments to bond clients, making the bond principal and interest payments directly to the bondholders so the City does not have to track and maintain ledgers on all bond holders and to balance all accounts to assure proper administration of the cash allocated for bond repayments. The cost for this service is a nominal \$500 per year per series of bonds issued.

17- B

This resolution incorporates several documents into the official record of the bond sale to assure compliance with State and Federal laws. It incorporates the Certificate of Tax Exemption for the Series 2017A bond which sets out the conditions under which the interest on these bonds remains exempt from federal taxation. It promises the City will follow the rules for continuing disclosure of actions and incidents which are determined to be material actions in the administration of the bonds. It pledges the City's tax base as payment for the bonds and levies the taxes necessary to make all payments of principal and interest on these bonds

### Recommendation

Adoption of the resolution is recommended.

### ATTACHMENTS:

Description	Type	Upload Date
Resolution 17-162 A & B	Resolution	7/18/2017

**ITEMS TO INCLUDE ON AGENDA FOR JULY 24, 2017**

**CITY OF COUNCIL BLUFFS, IOWA**

**Resolution 17-162 A & B**

\$9,540,000 General Obligation Bonds, Series 2017A.

- Resolution Appointing Paying Agent, Bond Registrar, and Transfer Agent, Approving the Paying Agent and Bond Registrar and Transfer Agent Agreement and Authorizing the Execution of the Agreement.
- Resolution authorizing and providing for the issuance, and levying a tax to pay the Bonds; Approval of the Tax Exemption Certificate and Continuing Disclosure Certificate.

NOTICE MUST BE GIVEN PURSUANT TO IOWA CODE  
CHAPTER 21 AND THE LOCAL RULES OF THE CITY.

July 24, 2017

The City Council of the City of Council Bluffs, State of Iowa, met in \_\_\_\_\_ session, in the Council Chambers, City Hall, 209 Pearl Street, Council Bluffs, Iowa, at \_\_\_\_\_ .M., on the above date. There were present Mayor \_\_\_\_\_, in the chair, and the following named Council Members:

\_\_\_\_\_

Absent: \_\_\_\_\_

Vacant: \_\_\_\_\_

\* \* \* \* \*

Council Member \_\_\_\_\_ introduced the following resolution entitled "RESOLUTION APPOINTING BANKERS TRUST COMPANY OF DES MOINES, IOWA, TO SERVE AS PAYING AGENT, BOND REGISTRAR, AND TRANSFER AGENT, APPROVING THE PAYING AGENT AND BOND REGISTRAR AND TRANSFER AGENT AGREEMENT AND AUTHORIZING THE EXECUTION OF THE AGREEMENT", and moved that the resolution be adopted. Council Member \_\_\_\_\_ seconded the motion to adopt. The roll was called and the vote was,

AYES: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

Whereupon, the Mayor declared said Resolution duly adopted as follows:

Resolution 17-162A

RESOLUTION APPOINTING BANKERS TRUST COMPANY OF DES MOINES, IOWA, TO SERVE AS PAYING AGENT, BOND REGISTRAR, AND TRANSFER AGENT, APPROVING THE PAYING AGENT AND BOND REGISTRAR AND TRANSFER AGENT AGREEMENT AND AUTHORIZING THE EXECUTION OF THE AGREEMENT

WHEREAS, \$9,540,000 General Obligation Bonds, Series 2017A, dated August 3, 2017, have been sold and action should now be taken to provide for the maintenance of records, registration of certificates and payment of principal and interest in connection with the issuance of the Bonds; and

WHEREAS, this Council has deemed that the services offered by Bankers Trust Company of Des Moines, Iowa, are necessary for compliance with rules, regulations, and requirements governing the registration, transfer and payment of registered bonds; and

WHEREAS, a Paying Agent, Bond Registrar and Transfer Agent Agreement (hereafter "Agreement") has been prepared to be entered into between the City and Bankers Trust Company.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, STATE OF IOWA:

1. That Bankers Trust Company of Des Moines, Iowa, is hereby appointed to serve as Paying Agent, Bond Registrar and Transfer Agent in connection with the issuance of \$9,540,000 General Obligation Bonds, Series 2017A, dated August 3, 2017.

2. That the Agreement with Bankers Trust Company of Des Moines, Iowa, is hereby approved and that the Mayor and Clerk are authorized to sign the Agreement on behalf of the City.

PASSED AND APPROVED this 24th day of July, 2017.

---

Mayor

ATTEST:

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City Clerk

Council Member \_\_\_\_\_ introduced the following Resolution entitled "RESOLUTION AMENDING THE 'RESOLUTION AUTHORIZING THE ISSUANCE OF \$700,000 GENERAL OBLIGATION BONDS, SERIES 2017A, AND LEVYING A TAX FOR THE PAYMENT THEREOF', PASSED AND APPROVED ON MARCH 27, 2017 AND AMENDING THE 'RESOLUTION AUTHORIZING THE ISSUANCE OF \$7,500,000 GENERAL OBLIGATION BONDS, SERIES 2017B AND LEVYING A TAX FOR THE PAYMENT THEREOF', PASSED AND APPROVED ON MARCH 27, 2017, BY SUBSTITUTING A NEW RESOLUTION INCORPORATING ALL INTO ONE ISSUANCE WITH THE PROCEEDS BEING SEPARATELY ACCOUNTED FOR, APPROVING THE ISSUANCE OF \$9,540,000 GENERAL OBLIGATION BONDS, SERIES 2017A, AND LEVYING A TAX FOR THE PAYMENT THEREOF AND APPROVING THE TAX EXEMPTION CERTIFICATE AND CONTINUING DISCLOSURE CERTIFICATE", and moved that it be adopted. Council Member \_\_\_\_\_ seconded the motion to adopt, and the roll being called thereon, the vote was as follows:

AYES: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

Whereupon, the Mayor declared said Resolution duly adopted as follows:

Resolution 17-162B

RESOLUTION AMENDING THE "RESOLUTION AUTHORIZING THE ISSUANCE OF \$700,000 GENERAL OBLIGATION BONDS, SERIES 2017A, AND LEVYING A TAX FOR THE PAYMENT THEREOF", PASSED AND APPROVED ON MARCH 27, 2017 AND AMENDING THE "RESOLUTION AUTHORIZING THE ISSUANCE OF \$7,500,000 GENERAL OBLIGATION BONDS, SERIES 2017B AND LEVYING A TAX FOR THE PAYMENT THEREOF", PASSED AND APPROVED ON MARCH 27, 2017, BY SUBSTITUTING A NEW RESOLUTION INCORPORATING ALL INTO ONE ISSUANCE WITH THE PROCEEDS BEING SEPARATELY ACCOUNTED FOR, APPROVING THE ISSUANCE OF \$9,540,000 GENERAL OBLIGATION BONDS, SERIES 2017A, AND LEVYING A TAX FOR THE PAYMENT THEREOF AND APPROVING THE TAX EXEMPTION CERTIFICATE AND CONTINUING DISCLOSURE CERTIFICATE

WHEREAS, the Issuer is duly incorporated, organized and exists under and by virtue of the laws and Constitution of the State of Iowa; and

WHEREAS, the Issuer is in need of funds to pay costs of opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of sidewalks, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices; and the acquisition of any real estate needed for any of the foregoing purposes; removal and replacement of dead or diseased trees in a public right of way, removal or replacement and planting of trees in parks, and the abatement of a nuisance, essential corporate purposes, and it is deemed necessary and advisable that General Obligation Bonds, to the amount of not to exceed \$750,000 be authorized for said purposes; and

WHEREAS, pursuant to notice published as required by Section 384.25 of the Code of Iowa, this Council has held a public meeting and hearing on June 12, 2017, upon the proposal to institute proceedings for the issuance of the Bonds, and the Council is therefore now authorized to proceed with the issuance of said Bonds for such purposes; and

WHEREAS, the City is in need of funds to pay costs of construction, reconstruction, enlargement, improvement, and equipping of recreation grounds, swimming pools and parks; and the construction, reconstruction, enlargement, improvement, and equipping of fire stations, general corporate purposes, and it is deemed necessary and advisable that General Obligation Bonds, to the amount of not to exceed \$450,000 be authorized for said purposes; and

WHEREAS, the Issuer has a population of more than 5,000 but not more than 75,000, and the Bonds for these purposes do not exceed \$700,000; and

WHEREAS, pursuant to notice published as required by Section 384.26 of the Code of Iowa, the Council of the City has held public meeting and hearing on June 12, 2017, upon the proposal to institute proceedings for the issuance of Bonds for general corporate purposes in the amounts as above set forth, and, no petition for referendum having been received, the Council is therefore now authorized to proceed with the issuance of said Bonds for such purposes; and

WHEREAS, the City is in need of funds to pay costs of any other purpose which is necessary for the operation of the city or the health and welfare of its citizens, including demolition of vacant buildings owned by the City, general corporate purposes, and it is deemed necessary and advisable that General Obligation Bonds, to the amount of not to exceed \$700,000 be authorized for said purposes; and

WHEREAS, the Issuer has a population of more than 5,000 but not more than 75,000, and the Bonds for these purposes do not exceed \$700,000; and

WHEREAS, pursuant to notice published as required by Section 384.26 of the Code of Iowa, the Council of the City has held public meeting and hearing on June 12, 2017, upon the proposal to institute proceedings for the issuance of Bonds for general corporate purposes in the amounts as above set forth, and, no petition for referendum having been received, the Council is therefore now authorized to proceed with the issuance of said Bonds for such purposes; and

WHEREAS, on March 27, 2017, the City Council of said City did adopt a certain Resolution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF \$700,000 GENERAL OBLIGATION BONDS, SERIES 2017A AND LEVYING A TAX FOR THE PAYMENT THEREOF" for the purpose of opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of sidewalks, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices; and the acquisition of any real estate needed for any of the foregoing purposes (the "Former 2017A Project"); and

WHEREAS, on March 27, 2017, the City Council of said City did adopt a certain Reslution entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF \$7,500,000 GENERAL OBLIGATION BONDS, SERIES 2017B, AND LEVYING A TAX FOR THE PAYMENT THEREOF" for the purpose of building, equipping and furnishing a police station and the acquisition of real estate therefor (the "Former 2017B Project"); and

WHEREAS, due to certain changes in the overall financing plans of the City, it is necessary to make numerous changes to and combine into one issue the Resolutions adopted on March 27, 2017 and June 12, 2017; and

WHEREAS, pursuant to Section 384.28 of the Code of Iowa, it is hereby found and determined that the various purposes comprising the Former 2017A Project and the Former 2017B Project and the various general obligation Bonds authorized as hereinabove described shall be combined for the purpose of issuance in a single issue of \$9,540,000 General Obligation Bonds, Series 2017A, as hereinafter set forth; and

WHEREAS, pursuant to the provisions of Chapter 75 of the Code of Iowa, the above mentioned Bonds were heretofore sold at public sale and action should now be taken to issue said Bonds conforming to the terms and conditions of the best bid received at the advertised public sale;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, STATE OF IOWA:

Section 1. Definitions. The following terms shall have the following meanings in this Resolution unless the text expressly or by necessary implication requires otherwise:

- "Authorized Denominations" shall mean \$5,000 or any integral multiple thereof.
- "Beneficial Owner" shall mean, whenever used with respect to a Bond, the person in whose name such Bond is recorded as the beneficial owner of such Bond by a Participant on the records of such Participant or such person's subrogee.
- "Blanket Issuer Letter of Representations" shall mean the Representation Letter from the Issuer to DTC, with respect to the Bonds.



- "Bond Fund" shall mean the fund created in Section 3 of this Resolution.
- "Bonds" shall mean \$9,540,000 General Obligation Bonds, Series 2017A, authorized to be issued by this Resolution.
- "Cede & Co." shall mean Cede & Co., the nominee of DTC, and any successor nominee of DTC with respect to the Bonds.
- "Continuing Disclosure Certificate" shall mean that certain Continuing Disclosure Certificate approved under the terms of this Resolution and to be executed by the Issuer and dated the date of issuance and delivery of the Bonds, as originally executed and as it may be amended from time to time in accordance with the terms thereof.
- "Depository Bonds " shall mean the Bonds as issued in the form of one global certificate for each maturity, registered in the Registration Books maintained by the Registrar in the name of DTC or its nominee.
- "DTC" shall mean The Depository Trust Company, New York, New York, which will act as security depository for the Bond pursuant to the Representation Letter.
- "Issuer" and "City" shall mean the City of Council Bluffs, State of Iowa.
- "Participants" shall mean those broker-dealers, banks and other financial institutions for which DTC holds Bonds as securities depository.
- "Paying Agent" shall mean Bankers Trust Company, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein as Issuer's agent to provide for the payment of principal of and interest on the Bonds as the same shall become due.
- "Project" shall mean the:
  - a) opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of sidewalks, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices; and the acquisition of any real estate needed for any of the foregoing purposes;
  - b) removal and replacement of dead or diseased trees in a public right of way, removal or replacement and planting of trees in parks, and the abatement of a nuisance;

c) construction, reconstruction, enlargement, improvement, and equipping of recreation grounds, swimming pools and parks; and the construction, reconstruction, enlargement, improvement, and equipping of fire stations;

d) any other purpose which is necessary for the operation of the city or the health and welfare of its citizens, including demolition of vacant buildings owned by the City; and

e) building, equipping and furnishing a police station and the acquisition of real estate therefor.

- "Project Fund" shall mean the fund required to be established by this Resolution for the deposit of the proceeds of the Bonds.

- "Rebate Fund" shall mean the fund so defined in and established pursuant to the Tax Exemption Certificate.

- "Registrar" shall mean Bankers Trust Company of Des Moines, Iowa, or such successor as may be approved by Issuer as provided herein and who shall carry out the duties prescribed herein with respect to maintaining a register of the owners of the Bonds. Unless otherwise specified, the Registrar shall also act as Transfer Agent for the Bonds.

- "Resolution" shall mean this resolution authorizing the Bonds.

- "Tax Exemption Certificate" shall mean the Tax Exemption Certificate approved under the terms of this Resolution and to be executed by the Finance Director and delivered at the time of issuance and delivery of the Bonds.

- "Treasurer" shall mean the Finance Director or such other officer as shall succeed to the same duties and responsibilities with respect to the recording and payment of the Bonds issued hereunder.

## Section 2. Levy and Certification of Annual Tax; Other Funds to be Used.

a) Levy of Annual Tax. That for the purpose of providing funds to pay the principal and interest of the Bonds hereinafter authorized to be issued, there is hereby levied for each future year the following direct annual tax on all of the taxable property in Council Bluffs, Iowa, to-wit:

AMOUNT	FISCAL YEAR (JULY 1 TO JUNE 30) YEAR OF COLLECTION
\$934,744* (pre-levy)	2017/2018
\$730,324**	2018/2019
\$733,625	2019/2020
\$729,375	2020/2021
\$734,825	2021/2022
\$734,675	2022/2023
\$728,875	2023/2024
\$732,825	2024/2025
\$731,175	2025/2026
\$734,075	2026/2027
\$486,375	2027/2028
\$490,575	2028/2029
\$489,325	2029/2030
\$487,775	2030/2031
\$490,925	2031/2032
\$488,625	2032/2033
\$486,025	2033/2034
\$488,125	2034/2035
\$489,218	2035/2036
\$489,844	2036/2037

\* A levy has been included in the budget previously certified for the Former 2017A Project in the amount of \$496,922 and for the Former 2017B Project in the amount of \$437,822 and will be used together with available City funds to pay the principal and interest of the Bond coming due in fiscal year 2017/2018. The total of the 2017/2018 pre-levy exceeds the debt service by \$2,101.

\*\* excess levy of \$2,101 has been deducted from 2018/2019 levy.

(NOTE: For example the levy to be made and certified against the taxable valuations of January 1, 2018 will be collected during the fiscal year commencing July 1, 2019.)

b) Resolution to be Filed With County Auditor. A certified copy of this Resolution shall be filed with the Auditor of Pottawattamie County, Iowa and the Auditor is hereby instructed in and for each of the years as provided, to levy and assess the tax hereby authorized in Section 2 of this Resolution, in like manner as other taxes are levied and assessed, and such taxes so levied in and for each of the years aforesaid be collected in like manner as other taxes of the City are collected, and when collected be used for the purpose of paying principal and interest on said Bonds issued in anticipation of the tax, and for no other purpose whatsoever, which action requires a modification and change of the levies originally made in accordance with the Bond Resolutions certified to and filed in the Pottawattamie County Auditor's office on March 28, 2017.

c) Additional City Funds Available. Principal and interest coming due at any time when the proceeds of said tax on hand shall be insufficient to pay the same shall be promptly paid when due from current funds of the City available for that purpose and reimbursement shall be made from such special fund in the amounts thus advanced.

Section 3. Bond Fund. Said tax shall be assessed and collected each year at the same time and in the same manner as, and in addition to, all other taxes in and for the City, and when collected they shall be converted into a special fund within the Debt Service Fund to be known as the "GENERAL OBLIGATION BOND FUND NO. 1" (the "Bond Fund"), which is hereby pledged for and shall be used only for the payment of the principal of and interest on the Bonds hereinafter authorized to be issued; and also there shall be apportioned to said fund its proportion of taxes received by the City from property that is centrally assessed by the State of Iowa.

Section 4. Application of Bond Proceeds. Proceeds of the Bonds, other than accrued interest except as may be provided below, shall be credited to the Project Fund and expended therefrom for the purposes of issuance. Any amounts on hand in the Project Fund shall be available for the payment of the principal of or interest on the Bonds at any time that other funds shall be insufficient to the purpose, in which event such funds shall be repaid to the Project Fund at the earliest opportunity. Any balance on hand in the Project Fund and not immediately required for its purposes may be invested not inconsistent with limitations provided by law or this Resolution.

Section 5. Investment of Bond Fund Proceeds. All moneys held in the Bond Fund, provided for by Section 3 of this Resolution shall be invested in investments permitted by Chapter 12B, Code of Iowa, 2015, as amended, or deposited in financial institutions which are members of the Federal Deposit Insurance Corporation and the deposits in which are insured thereby and all such deposits exceeding the maximum amount insured from time to time by FDIC or its equivalent successor in any one financial institution shall be continuously secured in compliance with Chapter 12C of the Code of Iowa, 2015, as amended, or otherwise by a valid pledge of direct obligations of the United States Government having an equivalent market value. All such interim investments shall mature before the date on which the moneys are required for payment of principal of or interest on the Bonds as herein provided.

Section 6. Bond Details, Execution and Redemption.

a) Bond Details. General Obligation Bonds of the City in the amount of \$9,540,000, shall be issued pursuant to the provisions of Sections 384.25, 384.26 and 384.28 of the Code of Iowa for the aforesaid purposes. The Bonds shall be designated "GENERAL OBLIGATION BOND, SERIES 2017A", be dated August 3, 2017, and bear interest from the date thereof, until payment thereof, at the office of the Paying Agent, said interest payable on June 1, 2018, and semiannually thereafter on the 1st day of June and December in each year until maturity at the rates hereinafter provided.

The Bonds shall be executed by the manual or facsimile signature of the Mayor and attested by the manual or facsimile signature of the Clerk, and impressed or printed with the seal of the City and shall be fully registered as to both principal and interest as provided in this Resolution; principal, interest and premium, if any, shall be payable at

the office of the Paying Agent by mailing of a check to the registered owner of the Bond. The Bonds shall be in the denomination of \$5,000 or multiples thereof. The Bonds shall mature and bear interest as follows:

Principal Amount	Interest Rate	Maturity June 1st
\$690,000	3.000%	2018
\$460,000	3.000%	2019
\$475,000	3.000%	2020
\$485,000	3.000%	2021
\$505,000	3.000%	2022
\$520,000	4.000%	2023
\$535,000	3.000%	2024
\$555,000	3.000%	2025
\$570,000	3.000%	2026
\$590,000	3.000%	2027
\$360,000	3.000%	2028
\$375,000	3.000%	2029
\$385,000	3.000%	2030
\$395,000	3.000%	2031
\$410,000	3.000%	2032
\$420,000	3.000%	2033
\$430,000	3.000%	2034
\$445,000	3.125%	2035
\$460,000	3.125%	2036
\$475,000	3.125%	2037

b) Redemption.

Optional Redemption. Bonds maturing after June 1, 2025, may be called for optional redemption by the Issuer on that date or any date thereafter, from any funds regardless of source, in whole or from time to time in part, in any order of maturity and within an annual maturity by lot. The terms of redemption shall be par, plus accrued interest to date of call.

Thirty days' written notice of redemption shall be given to the registered owner of the Bond. Failure to give written notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. All Bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment. Written notice will be deemed completed upon transmission to the owner of record.

If selection by lot within a maturity is required, the Registrar shall designate the Bonds to be redeemed by random selection of the names of the

registered owners of the entire annual maturity until the total amount of Bonds to be called has been reached.

If less than all of a maturity is called for redemption, the Issuer will notify DTC of the particular amount of such maturity to be redeemed prior to maturity. DTC will determine by lot the amount of each Participant's interest in such maturity to be redeemed and each Participant will then select by lot the beneficial ownership interests in such maturity to be redeemed. All prepayments shall be at a price of par plus accrued interest.

#### Section 7. Issuance of Bonds in Book-Entry Form; Replacement Bonds.

a) Notwithstanding the other provisions of this Resolution regarding registration, ownership, transfer, payment and exchange of the Bonds, unless the Issuer determines to permit the exchange of Depository Bonds for Bonds in Authorized Denominations, the Bonds shall be issued as Depository Bonds in denominations of the entire principal amount of each maturity of Bonds (or, if a portion of said principal amount is prepaid, said principal amount less the prepaid amount). The Bonds must be registered in the name of Cede & Co., as nominee for DTC. Payment of semiannual interest for any Bonds registered in the name of Cede & Co. will be made by wire transfer or New York Clearing House or equivalent next day funds to the account of Cede & Co. on the interest payment date for the Bonds at the address indicated or in the Representation Letter.

b) The Bonds will be initially issued in the form of separate single authenticated fully registered bonds in the amount of each stated maturity of the Bonds. Upon initial issuance, the ownership of the Bonds will be registered in the registry books of the Bankers Trust Company kept by the Paying Agent and Registrar in the name of Cede & Co., as nominee of DTC. The Paying Agent and Registrar and the Issuer may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for the purposes of payment of the principal or redemption price of or interest on the Bonds, selecting the Bonds or portions to be redeemed, giving any notice permitted or required to be given to registered owners of Bonds under the Resolution of the Issuer, registering the transfer of Bonds, obtaining any consent or other action to be taken by registered owners of the Bonds and for other purposes. The Paying Agent, Registrar and the Issuer have no responsibility or obligation to any Participant or Beneficial Owner of the Bonds under or through DTC with respect to the accuracy of records maintained by DTC or any Participant; with respect to the payment by DTC or Participant of an amount of principal or redemption price of or interest on the Bonds; with respect to any notice given to owners of Bonds under the Resolution; with respect to the Participant(s) selected to receive payment in the event of a partial redemption of the Bonds, or a consent given or other action taken by DTC as registered owner of the Bonds. The Paying Agent and Registrar shall pay all principal of and premium, if any, and interest on the Bonds only to Cede & Co. in accordance with the Representation Letter, and all payments are valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum paid. DTC must receive an authenticated Bond for each separate stated maturity evidencing the obligation of the Issuer to make payments of principal of and premium, if any, and

interest. Upon delivery by DTC to the Paying Agent and Registrar of written notice that DTC has determined to substitute a new nominee in place of Cede & Co., the Bonds will be transferable to the new nominee in accordance with this Section.

c) In the event the Issuer determines that it is in the best interest of the Beneficial Owners that they be able to obtain Bonds certificates, the Issuer may notify DTC and the Paying Agent and Registrar, whereupon DTC will notify the Participants, of the availability through DTC of Bonds certificates. The Bonds will be transferable in accordance with this Section. DTC may determine to discontinue providing its services with respect to the Bonds at any time by giving notice to the Issuer and the Paying Agent and Registrar and discharging its responsibilities under applicable law. In this event, the Bonds will be transferable in accordance with this Section.

d) Notwithstanding any other provision of the Resolution to the contrary, so long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on the Bond and all notices must be made and given, respectively to DTC as provided in the Representation letter.

e) In connection with any notice or other communication to be provided to Bondholders by the Issuer or the Paying Agent and Registrar with respect to a consent or other action to be taken by Bondholders, the Issuer or the Paying Agent and Registrar, as the case may be, shall establish a record date for the consent or other action and give DTC notice of the record date not less than 15 calendar days in advance of the record date to the extent possible. Notice to DTC must be given only when DTC is the sole Bondholder.

f) The Representation Letter is on file with DTC and sets forth certain matters with respect to, among other things, notices, consents and approvals by Bondholders and payments on the Bonds. The execution and delivery of the Representation Letter to DTC by the Issuer is ratified and confirmed.

g) In the event that a transfer or exchange of the Bonds is permitted under this Section, the transfer or exchange may be accomplished upon receipt by the Registrar from the registered owners of the Bonds to be transferred or exchanged and appropriate instruments of transfer. In the event Bond certificates are issued to holders other than Cede & Co., its successor as nominee for DTC as holder of all the Bonds, or other securities depository as holder of all the Bonds, the provisions of the Resolution apply to, among other things, the printing of certificates and the method of payment of principal of and interest on the certificates. Any substitute depository shall be designated in writing by the Issuer to the Paying Agent. Any such substitute depository shall be a qualified and registered "clearing agency" as provided in Section 17A of the Securities Exchange Act of 1934, as amended. The substitute depository shall provide for (i) immobilization of the Depository Bonds, (ii) registration and transfer of interests in Depository Bonds by book entries made on records of the depository or its nominee and (iii) payment of principal of, premium, if any, and interest on the Bonds in accordance with and as such interests may appear with respect to such book entries.

h) The officers of the Issuer are authorized and directed to prepare and furnish to the purchaser, and to the attorneys approving the legality of Bonds, certified copies of proceedings, ordinances, resolutions and records and all certificates and affidavits and other instruments as may be required to evidence the legality and marketability of the Bonds, and all certified copies, certificates, affidavits and other instruments constitute representations of the Issuer as to the correctness of all stated or recited facts.

Section 8. Registration of Bonds; Appointment of Registrar; Transfer; Ownership; Delivery; and Cancellation.

a) Registration. The ownership of Bonds may be transferred only by the making of an entry upon the books kept for the registration and transfer of ownership of the Bonds, and in no other way. Bankers Trust Company is hereby appointed as Bond Registrar under the terms of this Resolution and under the provisions of a separate agreement with the Issuer filed herewith which is made a part hereof by this reference. Registrar shall maintain the books of the Issuer for the registration of ownership of the Bonds for the payment of principal of and interest on the Bonds as provided in this Resolution. All Bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code and Section 384.31 of the Code of Iowa, subject to the provisions for registration and transfer contained in the Bonds and in this Resolution.

b) Transfer. The ownership of any Bond may be transferred only upon the Registration Books kept for the registration and transfer of Bonds and only upon surrender thereof at the office of the Registrar together with an assignment duly executed by the holder or his duly authorized attorney in fact in such form as shall be satisfactory to the Registrar, along with the address and social security number or federal employer identification number of such transferee (or, if registration is to be made in the name of multiple individuals, of all such transferees). In the event that the address of the registered owner of a Bond (other than a registered owner which is the nominee of the broker or dealer in question) is that of a broker or dealer, there must be disclosed on the Registration Books the information pertaining to the registered owner required above. Upon the transfer of any such Bond, a new fully registered Bond, of any denomination or denominations permitted by this Resolution in aggregate principal amount equal to the unmatured and unredeemed principal amount of such transferred fully registered Bond, and bearing interest at the same rate and maturing on the same date or dates shall be delivered by the Registrar.

c) Registration of Transferred Bonds. In all cases of the transfer of the Bonds, the Registrar shall register, at the earliest practicable time, on the Registration Books, the Bonds, in accordance with the provisions of this Resolution.

d) Ownership. As to any Bond, the person in whose name the ownership of the same shall be registered on the Registration Books of the Registrar shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of any such Bonds and the premium, if any, and interest thereon shall be made only to or upon the order of the registered owner thereof or his legal representative.



All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

e) Cancellation. All Bonds which have been redeemed shall not be reissued but shall be cancelled by the Registrar. All Bonds which are cancelled by the Registrar shall be destroyed and a certificate of the destruction thereof shall be furnished promptly to the Issuer; provided that if the Issuer shall so direct, the Registrar shall forward the cancelled Bonds to the Issuer.

f) Non-Presentment of Bonds. In the event any payment check representing payment of principal of or interest on the Bonds is returned to the Paying Agent or if any bond is not presented for payment of principal at the maturity or redemption date, if funds sufficient to pay such principal of or interest on Bonds shall have been made available to the Paying Agent for the benefit of the owner thereof, all liability of the Issuer to the owner thereof for such interest or payment of such Bonds shall forthwith cease, terminate and be completely discharged, and thereupon it shall be the duty of the Paying Agent to hold such funds, without liability for interest thereon, for the benefit of the owner of such Bonds who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Resolution or on, or with respect to, such interest or Bonds. The Paying Agent's obligation to hold such funds shall continue for a period equal to two years and six months following the date on which such interest or principal became due, whether at maturity, or at the date fixed for redemption thereof, or otherwise, at which time the Paying Agent, shall surrender any remaining funds so held to the Issuer, whereupon any claim under this Resolution by the Owners of such interest or Bonds of whatever nature shall be made upon the Issuer.

g) Registration and Transfer Fees. The Registrar may furnish to each owner, at the Issuer's expense, one bond for each annual maturity. The Registrar shall furnish additional Bonds in lesser denominations (but not less than the minimum denomination) to an owner who so requests.

Section 9. Reissuance of Mutilated, Destroyed, Stolen or Lost Bonds. In case any outstanding Bond shall become mutilated or be destroyed, stolen or lost, the Issuer shall at the request of Registrar authenticate and deliver a new Bond of like tenor and amount as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond to Registrar, upon surrender of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, upon filing with the Registrar evidence satisfactory to the Registrar and Issuer that such Bond has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Registrar and Issuer with satisfactory indemnity and complying with such other reasonable regulations as the Issuer or its agent may prescribe and paying such expenses as the Issuer may incur in connection therewith.

Section 10. Record Date. Payments of principal and interest, otherwise than upon full redemption, made in respect of any Bond, shall be made to the registered holder thereof or to their designated agent as the same appear on the books of the Registrar on the 15th day of the month preceding the payment date. All such payments shall fully discharge the obligations of

the Issuer in respect of such Bonds to the extent of the payments so made. Upon receipt of the final payment of principal, the holder of the Bond shall surrender the Bond to the Paying Agent.

Section 11. Execution, Authentication and Delivery of the Bonds. Upon the adoption of this Resolution, the Mayor and Clerk shall execute the Bonds by their manual or authorized signature and deliver the Bonds to the Registrar, who shall authenticate the Bonds and deliver the same to or upon order of the Purchaser. No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereunder unless the Registrar shall duly endorse and execute on such Bond a Certificate of Authentication substantially in the form of the Certificate herein set forth. Such Certificate upon any Bond executed on behalf of the Issuer shall be conclusive evidence that the Bond so authenticated has been duly issued under this Resolution and that the holder thereof is entitled to the benefits of this Resolution.

No Bonds shall be authenticated and delivered by the Registrar unless and until there shall have been provided the following:

1. A certified copy of the Resolution of Issuer authorizing the issuance of the Bonds;
2. A written order of Issuer signed by the Finance Director of the Issuer directing the authentication and delivery of the Bonds to or upon the order of the Purchaser upon payment of the purchase price as set forth therein;
3. The approving opinion of Ahlers & Cooney, P.C., Bond Counsel, concerning the validity and legality of all the Bonds proposed to be issued.

Section 12. Right to Name Substitute Paying Agent or Registrar. Issuer reserves the right to name a substitute, successor Registrar or Paying Agent upon giving prompt written notice to each registered bondholder.

Section 13. Form of Bond. Bonds shall be printed substantially in the form as follows:

"STATE OF IOWA"  
"COUNTY OF POTTAWATTAMIE"  
"CITY OF COUNCIL BLUFFS"  
"GENERAL OBLIGATION BOND"  
"SERIES 2017A"  
"CORPORATE PURPOSE"

Rate: \_\_\_\_\_  
Maturity: \_\_\_\_\_  
Bond Date: August 3, 2017  
CUSIP No.: \_\_\_\_\_  
"Registered"  
Certificate No. \_\_\_\_\_  
Principal Amount: \$ \_\_\_\_\_

The City of Council Bluffs, State of Iowa, a municipal corporation organized and existing under and by virtue of the Constitution and laws of the State of Iowa (the "Issuer"), for value received, promises to pay from the source and as hereinafter provided, on the maturity date indicated above, to

(Registration panel to be completed by Registrar or Printer with name of Registered Owner).

or registered assigns, the principal sum of (enter principal amount in long form) THOUSAND DOLLARS in lawful money of the United States of America, on the maturity date shown above, only upon presentation and surrender hereof at the office of Bankers Trust Company, Paying Agent of this issue, or its successor, with interest on the sum from the date hereof until paid at the rate per annum specified above, payable on June 1, 2018, and semiannually thereafter on the 1st day of June and December in each year.

Interest and principal shall be paid to the registered holder of the Bond as shown on the records of ownership maintained by the Registrar as of the 15th day of the month preceding such interest payment date. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

This Bond is issued pursuant to the provisions of Sections 384.25, 384.26 and 384.28 of the Code of Iowa, for the purpose of paying costs of:

- a) opening, widening, extending, grading, and draining of the right-of-way of streets, highways, avenues, alleys and public grounds; the construction, reconstruction, and repairing of any street improvements; the acquisition, installation, and repair of sidewalks, storm sewers, sanitary sewers, water service lines, street lighting, and traffic control devices; and the acquisition of any real estate needed for any of the foregoing purposes;
- b) removal and replacement of dead or diseased trees in a public right of way, removal or replacement and planting of trees in parks, and the abatement of a nuisance;
- c) construction, reconstruction, enlargement, improvement, and equipping of recreation grounds, swimming pools and parks; and the construction, reconstruction, enlargement, improvement, and equipping of fire stations;
- d) of any other purpose which is necessary for the operation of the city or the health and welfare of its citizens, including demolition of vacant buildings owned by the City; and
- e) building, equipping and furnishing a police station and the acquisition of real estate therefor,

in conformity to a Resolution of the Council of said City duly passed and approved.

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a limited purpose trust company ("DTC"), to the Issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other Issuer as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

Bonds maturing after June 1, 2025, may be called for optional redemption by the Issuer and paid before maturity on said date or any date thereafter, from any funds regardless of source, in whole or from time to time in part, in any order of maturity and within an annual maturity by lot. The terms of redemption shall be par, plus accrued interest to date of call.

Thirty days' written notice of redemption shall be given to the registered owner of the Bond. Failure to give written notice to any registered owner of the Bonds or any defect therein shall not affect the validity of any proceedings for the redemption of the Bonds. All bonds or portions thereof called for redemption will cease to bear interest after the specified redemption date, provided funds for their redemption are on deposit at the place of payment. Written notice will be deemed completed upon transmission to the owner of record.

If selection by lot within a maturity is required, the Registrar shall designate the Bonds to be redeemed by random selection of the names of the registered owners of the entire annual maturity until the total amount of Bonds to be called has been reached.

If less than all of a maturity is called for redemption, the Issuer will notify DTC of the particular amount of such maturity to be redeemed prior to maturity. DTC will determine by lot the amount of each Participant's interest in such maturity to be redeemed and each Participant will then select by lot the beneficial ownership interests in such maturity to be redeemed. All prepayments shall be at a price of par plus accrued interest.

Ownership of this Bond may be transferred only by transfer upon the books kept for such purpose by Bankers Trust Company, the Registrar. Such transfer on the books shall occur only upon presentation and surrender of this Bond at the office of the Registrar as designated below, together with an assignment duly executed by the owner hereof or his duly authorized attorney in the form as shall be satisfactory to the Registrar. Issuer reserves the right to substitute the Registrar and Paying Agent but shall, however, promptly give notice to registered Bondholders of such change. All bonds shall be negotiable as provided in Article 8 of the Uniform Commercial Code and Section 384.31 of the Code of Iowa, subject to the provisions for registration and transfer contained in the Bond Resolution.

This Bond is a "qualified tax-exempt obligation" designated by the City for purposes of Section 265(b)(3)(B) of the Internal Revenue Code of 1986.

And it is hereby represented and certified that all acts, conditions and things requisite, according to the laws and Constitution of the State of Iowa, to exist, to be had, to be done, or to

be performed precedent to the lawful issue of this Bond, have been existent, had, done and performed as required by law; that provision has been made for the levy of a sufficient continuing annual tax on all the taxable property within the territory of the Issuer for the payment of the principal and interest of this Bond as the same will respectively become due; that such taxes have been irrevocably pledged for the prompt payment hereof, both principal and interest; and the total indebtedness of the Issuer including this Bond, does not exceed the constitutional or statutory limitations.

IN TESTIMONY WHEREOF, the Issuer by its Council, has caused this Bond to be signed by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of its City Clerk, with the seal of the City printed or impressed hereon, and to be authenticated by the manual signature of an authorized representative of the Registrar, Bankers Trust Company, Des Moines, Iowa.

Date of authentication: \_\_\_\_\_

This is one of the Bonds described in the within mentioned Resolution, as registered by Bankers Trust Company.

BANKERS TRUST COMPANY, Registrar  
Des Moines, Iowa 50309

By: \_\_\_\_\_

Authorized Signature

Registrar and Transfer Agent: Bankers Trust Company

Paying Agent: Bankers Trust Company

SEE REVERSE FOR CERTAIN DEFINITIONS

(Seal)

(Signature Block)

CITY OF COUNCIL BLUFFS, STATE OF IOWA

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

(Information Required for Registration)

## ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ (Social Security or Tax Identification No. \_\_\_\_\_) the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney in fact to transfer the said Bond on the books kept for registration of the within Bond, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Person(s) executing this Assignment sign(s) here)

SIGNATURE )  
GUARANTEED) \_\_\_\_\_

## IMPORTANT - READ CAREFULLY

The signature(s) to this Power must correspond with the name(s) as written upon the face of the certificate(s) or bond(s) in every particular without alteration or enlargement or any change whatever. Signature guarantee must be provided in accordance with the prevailing standards and procedures of the Registrar and Transfer Agent. Such standards and procedures may require signature to be guaranteed by certain eligible guarantor institutions that participate in a recognized signature guarantee program.

## INFORMATION REQUIRED FOR REGISTRATION OF TRANSFER

Name of Transferee(s) \_\_\_\_\_  
Address of Transferee(s) \_\_\_\_\_  
Social Security or Tax Identification \_\_\_\_\_  
Number of Transferee(s) \_\_\_\_\_  
Transferee is a(n):  
Individual\* \_\_\_\_\_ Corporation \_\_\_\_\_  
Partnership \_\_\_\_\_ Trust \_\_\_\_\_

\*If the Bond is to be registered in the names of multiple individual owners, the names of all such owners and one address and social security number must be provided.

The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with rights of survivorship and not as tenants in common

IA UNIF TRANS MIN ACT - ..... Custodian .....  
 (Cust) (Minor)  
 Under Iowa Uniform Transfers to Minors Act.....  
 (State)

ADDITIONAL ABBREVIATIONS MAY  
ALSO BE USED THOUGH NOT IN THE ABOVE LIST

(End of form of Bond)

Section 14. Closing Documents. The Mayor and City Clerk are authorized and directed to execute, attest, seal and deliver for and on behalf of the City any other additional certificates, documents, or other papers and perform all other acts, including without limitation the execution of all closing documents, as they may deem necessary or appropriate in order to implement and carry out the intent and purposes of this Resolution.

Section 15. Contract Between Issuer and Purchaser. This Resolution constitutes a contract between said City and the purchaser of the Bonds.

Section 16. Non-Arbitrage Covenants. The Issuer reasonably expects and covenants that no use will be made of the proceeds from the issuance and sale of the Bonds issued hereunder which will cause any of the Bonds to be classified as arbitrage bonds within the meaning of Sections 148(a) and (b) of the Internal Revenue Code of the United States, as amended, and that throughout the term of the Bonds it will comply with the requirements of statutes and regulations issued thereunder.

To the best knowledge and belief of the Issuer, there are no facts or circumstances that would materially change the foregoing statements or the conclusion that it is not expected that the proceeds of the Bonds will be used in a manner that would cause the Bonds to be arbitrage bonds.

Section 17. Approval of Tax Exemption Certificate. Attached hereto is a form of Tax Exemption Certificate stating the Issuer's reasonable expectations as to the use of the proceeds of the Bonds. The form of Tax Exemption Certificate is approved. The Issuer hereby agrees to comply with the provisions of the Tax Exemption Certificate and the provisions of the Tax Exemption Certificate are hereby incorporated by reference as part of this Resolution. The Finance Director is hereby directed to make and insert all calculations and determinations necessary to complete the Tax Exemption Certificate at issuance of the Bonds to certify as to the reasonable expectations and covenants of the Issuer at that date.

Section 18. Continuing Disclosure. The Issuer hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, and the provisions of the Continuing Disclosure Certificate are hereby incorporated by reference as part of this Resolution and made a part hereof. Notwithstanding any other provision of this Resolution, failure of the Issuer to comply with the Continuing Disclosure Certificate shall not be considered an event of default under this Resolution; however, any holder of the Bonds or

Beneficial Owner may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Issuer to comply with its obligations under the Continuing Disclosure Certificate. For purposes of this section, "Beneficial Owner" means any person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bond (including persons holding Bonds through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Bonds for federal income tax purposes.

Section 19. Additional Covenants, Representations and Warranties of the Issuer. The Issuer certifies and covenants with the purchasers and holders of the Bonds from time to time outstanding that the Issuer through its officers, (a) will make such further specific covenants, representations and assurances as may be necessary or advisable; (b) comply with all representations, covenants and assurances contained in the Tax Exemption Certificate, which Tax Exemption Certificate shall constitute a part of the contract between the Issuer and the owners of the Bonds; (c) consult with Bond Counsel (as defined in the Tax Exemption Certificate); (d) pay to the United States, as necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Bonds; (e) file such forms, statements and supporting documents as may be required and in a timely manner; and (f) if deemed necessary or advisable by its officers, to employ and pay fiscal agents, financial advisors, attorneys and other persons to assist the Issuer in such compliance.

Section 20. Amendment of Resolution to Maintain Tax Exemption. This Resolution may be amended without the consent of any owner of the Bonds if, in the opinion of Bond Counsel, such amendment is necessary to maintain tax exemption with respect to the Bonds under applicable Federal law or regulations.

Section 21. Qualified Tax-Exempt Obligations. For the sole purpose of qualifying the Bonds as "Qualified Tax-Exempt Obligations" pursuant to Section 265(b)(3)(B) of the Internal Revenue Code of the United States, the Issuer hereby designates the Bonds as qualified tax-exempt obligations and represents that the reasonably anticipated amount of tax-exempt governmental and qualified 501(c)(3) obligations which will be issued during the current calendar year will not exceed Ten (10) Million Dollars.

Section 22. Repeal of Conflicting Resolutions or Ordinances. All ordinances and resolutions and parts of ordinances and resolutions in conflict herewith are hereby repealed.

Section 23. Severability Clause. If any section, paragraph, clause or provision of this Resolution be held invalid, such invalidity shall not affect any of the remaining provisions hereof, and this Resolution shall become effective immediately upon its passage and approval.



PASSED AND APPROVED this 24th day of July, 2017.

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Mayor

ATTEST:

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City Clerk

STATE OF IOWA )  
 ) SS  
COUNTY OF POTTAWATTAMIE )

WITNESS my hand and the seal of the Council hereto affixed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

(SEAL)

## Council Communication

Department: Community

Development

Case/Project No.: SAV-17-002

Resolution 17-163

Council Action: 7/24/2017

Submitted by: Christopher

Gibbons

### Description

Resolution of Intent to vacate that part of 11th Avenue right-of-way abutting properties legally described as Lot 6, Block 11, Riddles Subdivision and the East one-half of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision; and to vacate that part of 11th Avenue right-of-way extending from the East right-of-way line of South 6th Street to the West right-of-way line of South Main Street; and to vacate the West North/South alley in Block 15, Riddles Subdivision and setting a Public Hearing for August 14, 2017 at 7:00 p.m.

### Background/Discussion

The City of Council Bluffs is proposing to vacate the above described 11<sup>th</sup> Avenue right-of-way and the West north/south alley in Block 15, Riddles Subdivision. The proposed request would allow nonessential alley/right-of-way to be vacated and later conveyed to abutting property owners for redevelopment projects in the South Main Street area.

The subject 11<sup>th</sup> Avenue right-of-way is comprised of two sections. The west section measures approximately 66 feet wide by 154 feet long and extends from the South Expressway to the South 6<sup>th</sup> Street.

The east section measures approximately 66 feet wide by 310 feet long and extends from South 6<sup>th</sup> Street to South Main Street. All of the subject 11<sup>th</sup> Avenue right-of-way is unimproved and was previously occupied by the Burlington Northern-Santa Fe Railroad (BNSF). In early 2017, the Iowa Department of Transportation removed the BNSF railroad tracks from 11<sup>th</sup> Avenue as part of their rail consolidation plan associated with the Interstate 29/80 reconstruction project. The City has no plans to build a new street in either right-of-way section. Properties abutting the west section of 11<sup>th</sup> Avenue are mostly undeveloped and have access to other public right-of-way, except for one warehouse property located immediately east of the South Expressway. This property utilizes 11<sup>th</sup> Avenue for their road frontage and would become landlocked if the abutting right-of-way is vacated, which is contrary the City's adopted policy and procedures for street right-of-way vacations. The City could vacate the portion of 11<sup>th</sup> Avenue immediately east of the subject property and not cause it to become landlocked (see Attachment B). Properties abutting the east section of 11<sup>th</sup> Avenue consist of undeveloped land, mixed commercial/residential building ("ArtSpace") and a vacant historic building (McCormick International Harvester Building). All of these abutting properties have access to other public right-of-way and would not be landlocked if 11<sup>th</sup> Avenue is vacated.

The subject West north/south alley in Block 15, Riddles Subdivision measures 12 feet wide by 272 feet long and is surrounded by undeveloped land, except for a storage yard located at the northeast corner of the intersection of South 6<sup>th</sup> Street and 12<sup>th</sup> Avenue. The alley is unimproved and the City has no plans to pave it at this time. No abutting properties utilize the alley for access.

All City departments and utility providers were notified of the proposed vacation requests. No adverse comments were received and it appears that no utilities are located within the subject right-of-way or alley; therefore, easements are not necessary. No abutting property owners were notified of the proposed request, as the City intends to own the alley and right-of-way land area, if vacated. Any future disposal of the vacated 11<sup>th</sup> Avenue right-of-way will require a separate public hearing by City Council. The proposed vacations are generally consistent with redevelopment objectives stated in the South Main Street Sub-Area Plan of the Bluffs Tomorrow: 2030 Plan (comprehensive plan).

### **Recommendation**

The Community Development Department recommends the following:

1. Approval of the request to vacate that part of 11<sup>th</sup> Avenue extending from the east right-of-way line of South 6<sup>th</sup> Street to the west right-of-way line of South Main Street;
2. Approval to vacate that portion of 11<sup>th</sup> Avenue abutting properties legally described as Lot 6, Block 11, Riddles Subdivision and the East ½ of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision; and
3. Approval of the request to vacate the West north/south alley in Block 15, Riddles Subdivision.

### **Public Hearing**

Speakers in favor:

1. Rose Brown, Planning Coordinator, Community Development Department, City of Council Bluffs, 209 Pearl Street. Council Bluffs, IA 51503.

Speakers against: None.

### **Planning Commission Recommendation**

The Planning Commission recommends the following:

1. Approval of the request to vacate that part of 11<sup>th</sup> Avenue extending from the east right-of-way line of South 6<sup>th</sup> Street to the west right-of-way line of South Main Street; and
2. Approval to vacate that portion of 11<sup>th</sup> Avenue abutting properties legally described as Lot 6, Block 11, Riddles Subdivision and the East ½ of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision; and
3. Approval of the request to vacate the West north/south alley in Block 15, Riddles Subdivision.

VOTE: AYE 10 NAY 0 ABSTAIN 0 ABSENT 1 Motion: Carried

**Attachment A** – Map showing requested alley and right-of-way vacations.

**Attachment B** – Map showing staff recommendation for the proposed alley and right-of-way vacations.

### **Recommendation**

Approval of Resolution

### **ATTACHMENTS:**

Description	Type	Upload Date
Public Hearing Notice	Other	7/13/2017
Attachment A and B	Resolution	7/13/2017

Staff Report Exhibits A through D  
Resolution 17-163

Resolution 7/13/2017  
Resolution 7/18/2017

**NOTICE OF PUBLIC HEARING  
ON INTENT TO VACATE CITY PROPERTY**

TO WHOM IT MAY CONCERN:

You and each of you are hereby notified that the City Council of the City of Council Bluffs, Iowa, has scheduled a public hearing on the request to vacate that part of 11<sup>th</sup> Avenue right-of-way abutting properties legally described as Lot 6, Block 11, Riddles Subdivision and the East one-half of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision; and to vacate that part of 11<sup>th</sup> Avenue right-of-way extending from the East right-of-way line of South 6<sup>th</sup> Street to the West right-of-way line of South Main Street; and to vacate the West north/south alley in Block 15, Riddles Subdivision, City of Council Bluffs, Pottawattamie County, Iowa.

You are further notified that a public hearing on said matter will be held by the City Council of the City of Council Bluffs, Iowa, at its regular meeting held at 7:00 p.m. on the 14<sup>th</sup> day of August, 2017 in the City Council Chambers, 2<sup>nd</sup> Floor of City Hall, 209 Pearl Street, Council Bluffs, Iowa at which time and place all persons interested in said matter will be given an opportunity to be heard.

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Jodi Quakenbush,

City Clerk

(07/12/17) BG/REB/CNG

(Case #SAV-17-002)

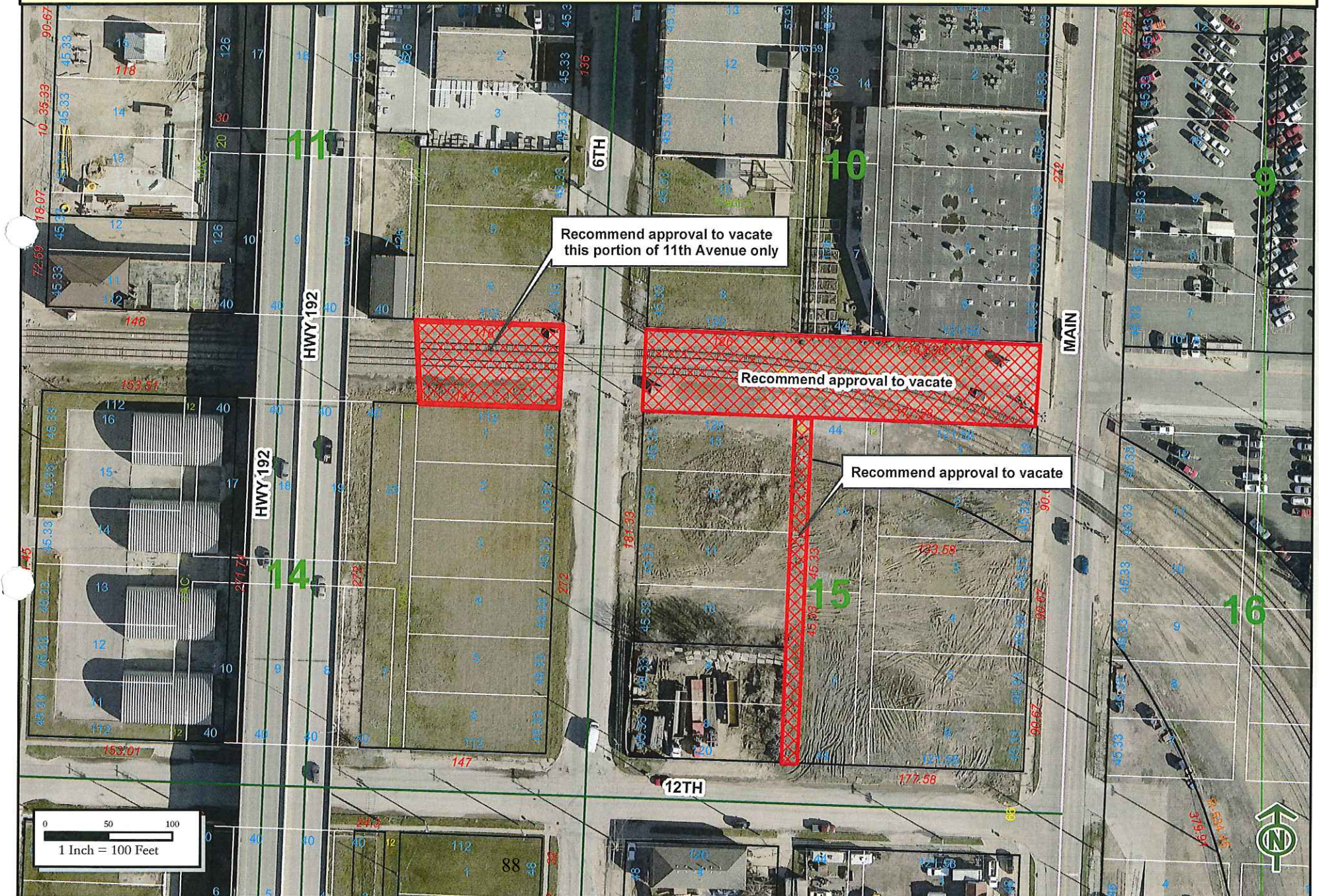


# CITY OF COUNCIL BLUFFS - CITY PLANNING COMMISSION ALLEY/RIGHT-OF-WAY VACATION MAP CASE # SAV-17-002





# CITY OF COUNCIL BLUFFS - CITY PLANNING COMMISSION STAFF RECOMMENDATION ALLEY AND RIGHT-OF-WAY VACATION MAP CASE # SAV-17-002





**Exhibit A: View of the west section of 11<sup>th</sup> Avenue proposed to be vacated.**



**Exhibit B: View of the east section of 11<sup>th</sup> Avenue proposed to be vacated.**



**Exhibit C: View of properties abutting the subject 11<sup>th</sup> Avenue right-of-way.**



**Exhibit D: View of the subject alley proposed to be vacated and the surrounding land.**



Prepared by: Community Development Dept., Co. Bluffs, IA 51503 – Phone: 328-4629  
Return to: City Clerk, 209 Pearl Street, Co. Bluffs, IA 51503 – Phone: 328-4616

RESOLUTION NO. 17-163

A RESOLUTION OF INTENT TO VACATE THAT PART OF 11<sup>TH</sup> AVENUE RIGHT-OF-WAY ABUTTING PROPERTIES LEGALLY DESCRIBED AS LOT 6, BLOCK 11, RIDDLES SUBDIVISION AND THE EAST ONE-HALF OF THE VACATED ALLEY ADJACENT ALONG WITH LOT 1, BLOCK 14, RIDDLES SUBDIVISION; AND TO VACATE THAT PART OF 11<sup>TH</sup> AVENUE RIGHT-OF-WAY EXTENDING FROM THE EAST RIGHT-OF-WAY LINE OF SOUTH 6<sup>TH</sup> STREET TO THE WEST RIGHT-OF-WAY LINE OF SOUTH MAIN STREET; AND TO VACATE THE WEST NORTH/SOUTH ALLEY IN BLOCK 15, RIDDLES SUBDIVISION, CITY OF COUNCIL BLUFFS, POTTAWATTAMIE COUNTY, IOWA

WHEREAS, this City of Council Bluffs requests vacation of that part of 11<sup>th</sup> Avenue right-of-way abutting Lot 6, Block 11, Riddles Subdivision and the East ½ of the vacated alley adjacent along with Lot 1, Block 14, Riddles Subdivision and to vacate that part of 11<sup>th</sup> Avenue right-of-way extending from the East right-of-way line of South 6<sup>th</sup> Street to the West right-of-way line of South Main Street; City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, this City of Council Bluffs requests vacation of the West north/south alley in Block 15, Riddles Subdivision, City of Council Bluffs, Pottawattamie County, Iowa; and

WHEREAS, this City Council hereby declares its intent to vacate this City-owned alley and right-of-way.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA:

That this City Council hereby declares its intent to retain ownership of the above described City property;  
and



BE IT FURTHER RESOLVED

That a public hearing on the City's intent to vacate this property is hereby set for August 14, 2017.

ADOPTED

AND

APPROVED:

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk

Planning Case #SAV-17-002

## Council Communication

Department: Community

Development

Case/Project No.: WHTIP-17-006

Resolution 17-164

Council Action: 7/24/2017

Submitted by: Brenda Carrico

### Description

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and Legacy Home Development LLC for Workforce Housing Tax Incentive Program (WHTIP) benefits.

### Background/Discussion

#### Background

The State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted towards middle-income households and that focus on the redevelopment or repurposing of existing structures. This program replaced the Housing Enterprise Zone Program.

To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall include at least one of the following:

- (1) Four or more single-family dwelling units.
- (2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.
- (3) Two or more dwelling units located in the upper story of an existing multi-use building.

The average dwelling unit cost cannot exceed \$200,000 per dwelling unit or \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment or preservation of eligible property. This limitation only applies to those costs that are directly attributable to the improvement of the property or the structures and is defined in the Iowa Administrative Code.

Additionally, the WHTIP requires a city match pledge for each housing project in an amount equal to at least \$1,000 per dwelling unit, in the form of cash, cash equivalent, a local property tax exemption, rebate, refund or reimbursement.

#### Discussion

Legacy Home Development LLC has submitted a request for WHTIP benefits on four lots widely spread throughout the City of Council Bluffs. The homes will be used as rentals and will have four bedrooms and two bathrooms. They will rent for approximately \$1,200 per month. The ranch style homes will have approximately 1,200 finished square feet and a 2 car garage.

The total project investment is \$673,854.00. The total financial workforce housing tax incentive available to the project is estimated to be between \$71,697.06 and \$79,082.46.

Based on review of the applicant's request, the project discussed above meets the requirements for Workforce Housing Tax Incentive Program benefits. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.

The application fee of \$1,000 per dwelling unit will provide the \$4,000 needed to meet the local match

requirement. Any final approval of this application is contingent upon the City receiving this cash for the project from the entity listed above.

### **Recommendation**

The Community Development Department recommends approval of the Workforce Housing Tax Incentive Program application submitted by Legacy Home Development LLC for:

- 1) Lot 11, Block 12, Hall's Addition (generally located at 923 Avenue D);
- 2) Lot 12, Block 13, Beer's Subdivision (generally located at 1522 Avenue A);
- 3) Lot 11, Block 1, Harriman Place Addition (generally located at 3234 9<sup>th</sup> Avenue); and
- 4) The east 2 feet of Lot 34, all of Lot 35 and all of Lot 36, except the east 2 feet, Block 4, Wright's Addition (generally located at 2428 2<sup>nd</sup> Avenue); all in the City of Council Bluffs, Pottawattamie County, Iowa.

### **ATTACHMENTS:**

Description	Type	Upload Date
Resolution 17-164	Resolution	7/18/2017

**RESOLUTION NO. 17-164**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING A JOINT APPLICATION TO THE IOWA ECONOMIC DEVELOPMENT AUTHORITY (IEDA) BY THE CITY OF COUNCIL BLUFFS AND LEGACY HOME DEVELOPMENT LLC FOR WORKFORCE HOUSING TAX INCENTIVE PROGRAM (WHTIP) BENEFITS.**

**WHEREAS,** the State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18; and

**WHEREAS,** the purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures; and

**WHEREAS,** Legacy Home Development LLC proposes to construct four single-family units and has requested WHTIP benefits; and

**WHEREAS,** the projects are eligible for WHTIP under the category of “new construction, rehab, repair, or redevelopment of dwelling units in a distressed workforce housing community (Greenfield Development);” and

**WHEREAS,** the legal descriptions of the project locations are:

- 1) Lot 11, Block 12, Hall’s Addition (generally located at 923 Avenue D);
- 2) Lot 12, Block 13, Beer’s Subdivision (generally located at 1522 Avenue A);
- 3) Lot 11, Block 1, Harriman Place Addition (generally located at 3234 9<sup>th</sup> Avenue); and
- 4) The east 2 feet of Lot 34, all of Lot 35 and all of Lot 36, except the east 2 feet, Block 4, Wright’s Addition (generally located at 2428 2<sup>nd</sup> Avenue); all in the City of Council Bluffs, Pottawattamie County, Iowa;

**WHEREAS,** the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project and does not exceed \$200,000 per dwelling unit; and

**WHEREAS,** the developer certifies that their units when completed and made available for occupancy will meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards; and

**WHEREAS,** the City of Council Bluffs commits to local matching funds of \$1,000 cash per dwelling unit, as required by the program; and

**WHEREAS,** after review and consideration of the request, the City of Council Bluffs has determined that the Legacy Home Development LLC project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

**Section 1.0** The City Council declares Legacy Home Development LLC an eligible entity for WHTIP benefits.

**Section 2.0** The City Council approves the Legacy Home Development LLC request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

**Section 3.0** The Mayor is hereby authorized to take such further actions as deemed necessary in order to carry into effect the provisions of this resolution.

**Section 4.0** The provisions of this resolution shall be governed by the laws of the State of Iowa.

**Section 5.0** That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

**Section 6.0** That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

**Section 7.0** That the approval of any and all WHTIP benefits is contingent upon Legacy Home Development LLC meeting all other applicable City codes and ordinances.

**Section 8.0** That this resolution shall become effective immediately upon its passage and approval.

ADOPTED  
AND  
APPROVED:

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush

\_\_\_\_\_  
City Clerk

STATE OF IOWA )  
COUNTY OF )ss  
POTTAWATTAMIE)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for said County and State, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Matthew J. Walsh and said Jodi Quakenbush, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State



## Council Communication

Department: Community

Development

Case/Project No.: WHTIP-17-008

Resolution 17-165

Council Action: 7/24/2017

Submitted by: Brenda Carrico

### Description

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and Eagle 4, LLC for Workforce Housing Tax Incentive Program (WHTIP) benefits.

### Background/Discussion

#### Background

The State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted towards middle-income households and that focus on the redevelopment or repurposing of existing structures. This program replaced the Housing Enterprise Zone Program.

To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall include at least one of the following:

- (1) Four or more single-family dwelling units.
- (2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.
- (3) Two or more dwelling units located in the upper story of an existing multi-use building.

The average dwelling unit cost cannot exceed \$200,000 per dwelling unit or \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment or preservation of eligible property. This limitation only applies to those costs that are directly attributable to the improvement of the property or the structures and is defined in the Iowa Administrative Code.

Additionally, the WHTIP requires a city match pledge for each housing project in an amount equal to at least \$1,000 per dwelling unit, in the form of cash, cash equivalent, a local property tax exemption, rebate, refund or reimbursement.

#### **Discussion**

Eagle 4, LLC has submitted a request for WHTIP benefits on four lots in Eagle Trail Subdivision, Phase 4 (Lots 109, 150, 162 and 170). The homes will have an estimated sales price of \$195,000. The ranch style home will have three bedrooms, two bathrooms, a two car garage and approximately 1,482 finished square feet. The homes will have attractive stone accents on the exterior, large kitchens and large living room areas. The construction of these homes will help fill a demand for new homes in the \$180,000-\$200,000 sales price range.

The total project investment is \$780,000.00. The total financial workforce housing tax incentive available to the project is estimated to be between \$78,612.00 and \$96,612.00.

Based on review of the applicant's request, the project discussed above meets the requirements for Workforce Housing Tax Incentive Program benefits. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.

The application fee of \$1,000 per dwelling unit will provide the \$4,000 needed to meet the local match requirement. Any final approval of this application is contingent upon the City receiving this cash for the project from the entity listed above.

**Recommendation**

The Community Development Department recommends approval of the Workforce Housing Tax Incentive Program application submitted by Eagle 4, LLC for Lots 109, 150, 162 and 170, Eagle Trail Subdivision, Phase 4.

**ATTACHMENTS:**

Description	Type	Upload Date
Resolution 17-165	Resolution	7/18/2017

**RESOLUTION NO. 17-165**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING A JOINT APPLICATION TO THE IOWA ECONOMIC DEVELOPMENT AUTHORITY (IEDA) BY THE CITY OF COUNCIL BLUFFS AND EAGLE 4, LLC FOR WORKFORCE HOUSING TAX INCENTIVE PROGRAM (WHTIP) BENEFITS.**

- WHEREAS,** the State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18; and
- WHEREAS,** the purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures; and
- WHEREAS,** Eagle 4, LLC proposes to construct four single-family units and has requested WHTIP benefits; and
- WHEREAS,** the projects are eligible for WHTIP under the category of “new construction, rehab, repair, or redevelopment of dwelling units in a distressed workforce housing community (Greenfield Development);” and
- WHEREAS,** the legal descriptions of the project locations are Lots 109, 150, 162 and 170, Eagle Trail Subdivision, Phase 4; all in the City of Council Bluffs, Pottawattamie County, Iowa.;
- WHEREAS,** the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project and does not exceed \$200,000 per dwelling unit; and
- WHEREAS,** the developer certifies that their units when completed and made available for occupancy will meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards; and
- WHEREAS,** the City of Council Bluffs commits to local matching funds of \$1,000 cash per dwelling unit, as required by the program; and
- WHEREAS,** after review and consideration of the request, the City of Council Bluffs has determined that the Eagle 4, LLC project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

**Section 1.0** The City Council declares Eagle 4, LLC an eligible entity for WHTIP benefits.

**Section 2.0** The City Council approves the Eagle 4, LLC request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

**Section 3.0** The Mayor is hereby authorized to take such further actions as deemed necessary in order to carry into effect the provisions of this resolution.

**Section 4.0** The provisions of this resolution shall be governed by the laws of the State of Iowa.

**Section 5.0** That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

**Section 6.0** That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

**Section 7.0** That the approval of any and all WHTIP benefits is contingent upon Eagle 4, LLC meeting all other applicable City codes and ordinances.

**Section 8.0** That this resolution shall become effective immediately upon its passage and approval.

ADOPTED  
AND  
APPROVED:

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush

\_\_\_\_\_  
City Clerk

STATE OF IOWA    )  
COUNTY OF        )ss  
POTTAWATTAMIE)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for said County and State, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Matthew J. Walsh and said Jodi Quakenbush, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State

## Council Communication

Department: Community

Development

Case/Project No.: WHTIP-17-007

Resolution 17-166

Council Action: 7/24/2017

Submitted by: Brenda Carrico

### Description

Resolution authorizing a joint application to the Iowa Economic Development Authority (IEDA) by the City of Council Bluffs and New Community Development Corp., dba NeighborWorks Home Solutions for Workforce Housing Tax Incentive Program (WHTIP) benefits.

### Background/Discussion

#### Background

The State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18. The purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted towards middle-income households and that focus on the redevelopment or repurposing of existing structures. This program replaced the Housing Enterprise Zone Program.

To receive workforce housing tax incentives pursuant to the program, a proposed housing project shall include at least one of the following:

- (1) Four or more single-family dwelling units.
- (2) One or more multiple dwelling unit buildings each containing three or more individual dwelling units.
- (3) Two or more dwelling units located in the upper story of an existing multi-use building.

The average dwelling unit cost cannot exceed \$200,000 per dwelling unit or \$250,000 per dwelling unit if the project involves the rehabilitation, repair, redevelopment or preservation of eligible property. This limitation only applies to those costs that are directly attributable to the improvement of the property or the structures and is defined in the Iowa Administrative Code.

Additionally, the WHTIP requires a city match pledge for each housing project in an amount equal to at least \$1,000 per dwelling unit, in the form of cash, cash equivalent, a local property tax exemption, rebate, refund or reimbursement.

#### **Discussion**

New Community Development Corporation has submitted a request for WHTIP benefits on four lots spread throughout the City of Council Bluffs. The homes will have sales prices ranging from \$136,500 to \$190,000. The ranch style home for Susan Lane will have two bedrooms, two bathrooms, an unfinished basement and a two car garage. The main floor will have 1,324 finished square feet and 1,288 of unfinished square feet in the basement. The homes on 5<sup>th</sup> Avenue and Avenue A will have three bedrooms, three bathrooms, no basements and no garages. Their approximate finished square feet will be 1,266. The home on Avenue J will have three bedrooms, three bathrooms, no basement and a two car garage. It will have approximately 1,443 finished square feet.

The total project investment is \$569,351.00. The total financial workforce housing tax incentive available to the project is estimated to be between \$79,708.28 and \$82,773.18.

Based on review of the applicant's request, the project discussed above meets the requirements for

Workforce Housing Tax Incentive Program benefits. As a result, the applicant is eligible for the following benefits: 10% investment tax credit and 100% rebate of state sales and utility use taxes.

The application fee of \$1,000 per dwelling unit will provide the \$4,000 needed to meet the local match requirement. Any final approval of this application is contingent upon the City receiving this cash for the project from the entity listed above.

### **Recommendation**

The Community Development Department recommends approval of the Workforce Housing Tax Incentive Program application submitted by New Community Development Corporation for:

- 1) Lot 16, except the northwesterly 8 feet thereof, in Lot 3, Auditor's Subdivision of SE ¼ SE ¼ of Section 31-75-43 (generally located at 16 Susan Lane);
- 2) Lot 5, except the west 7 feet thereof, Block B, Curtis and Ramsey Addition (generally located at 908 5<sup>th</sup> Avenue);
- 3) Lot 4, Block 1, Evans Bridge Addition (generally located at 2815 Avenue A); and
- 4) Lot 2, Walnut Grove Subdivision (generally located at 2932 Avenue J); all in the City of Council Bluffs, Pottawattamie County, Iowa.

### **ATTACHMENTS:**

Description	Type	Upload Date
Resolution 17-166	Resolution	7/18/2017

**RESOLUTION NO. 17-166**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS AUTHORIZING A JOINT APPLICATION TO THE IOWA ECONOMIC DEVELOPMENT AUTHORITY (IEDA) BY THE CITY OF COUNCIL BLUFFS AND NEW COMMUNITY DEVELOPMENT CORPORATION FOR WORKFORCE HOUSING TAX INCENTIVE PROGRAM (WHTIP) BENEFITS.**

- WHEREAS,** the State of Iowa established the Workforce Housing Tax Incentive Program (WHTIP) pursuant to Iowa Code Section 15.106A and the 2014 Iowa Acts, House File 2448, Section 18; and
- WHEREAS,** the purpose of the program is to assist the development of workforce housing in Iowa communities by providing incentives for housing projects that are targeted at middle-income households and that focus on the redevelopment or repurposing of existing structures; and
- WHEREAS,** New Community Development Corporation proposes to construct four single-family units and has requested WHTIP benefits; and
- WHEREAS,** the projects are eligible for WHTIP under the category of “new construction, rehab, repair, or redevelopment of dwelling units in a distressed workforce housing community (Greenfield Development);” and
- WHEREAS,** the legal descriptions of the project locations are:
- 1) Lot 16, except the northwesterly 8 feet thereof, in Lot 3, Auditor’s Subdivision of SE ¼ SE ¼ of Section 31-75-43 (generally located at 16 Susan Lane);
  - 2) Lot 5, except the west 7 feet thereof, Block B, Curtis and Ramsey Addition (generally located at 908 5<sup>th</sup> Avenue);
  - 3) Lot 4, Block 1, Evans Bridge Addition (generally located at 2815 Avenue A); and
  - 4) Lot 2, Walnut Grove Subdivision (generally located at 2932 Avenue J); all in the City of Council Bluffs, Pottawattamie County, Iowa.; and
- WHEREAS,** the average dwelling unit cost equals the costs directly related to the housing project divided by the total number of dwelling units in the housing project and does not exceed \$200,000 per dwelling unit; and
- WHEREAS,** the developer certifies that their units when completed and made available for occupancy will meet the U.S. Department of Housing and Urban Development’s housing quality standards and all applicable local safety standards; and
- WHEREAS,** the City of Council Bluffs commits to local matching funds of \$1,000 cash per dwelling unit, as required by the program; and
- WHEREAS,** after review and consideration of the request, the City of Council Bluffs has determined that the New Community Development Corporation project meets the requirements to qualify for benefits.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

**Section 1.0** The City Council declares New Community Development Corporation an eligible entity for WHTIP benefits.

**Section 2.0** The City Council approves the New Community Development Corporation request for a 10% state investment tax credit and a 100% rebate of sales and utility use taxes subject to the entity entering into an agreement with the City. The tax credit, if not entirely used during the first year, can be carried over and applied against state tax liability for the next seven years or until depleted, whichever occurs first.

**Section 3.0** The Mayor is hereby authorized to take such further actions as deemed necessary in order to carry into effect the provisions of this resolution.

**Section 4.0** The provisions of this resolution shall be governed by the laws of the State of Iowa.

**Section 5.0** That all resolutions and parts thereof in conflict therewith are hereby repealed to the extent of such conflict.

**Section 6.0** That the provisions of this resolution are hereby declared to be separable and if any section, phrase, or provision shall be any reason be declared to be invalid, such declaration shall not effect the validity of the remainder of the sections, phrases and provisions hereof.

**Section 7.0** That the approval of any and all WHTIP benefits is contingent upon New Community Development Corporation meeting all other applicable City codes and ordinances.

**Section 8.0** That this resolution shall become effective immediately upon its passage and approval.

ADOPTED  
AND  
APPROVED:

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush

\_\_\_\_\_  
City Clerk

STATE OF IOWA    )  
COUNTY OF        )ss  
POTTAWATTAMIE)

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me the undersigned, a Notary Public in and for said County and State, personally appeared Matthew J. Walsh and Jodi Quakenbush, to me personally known, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the said City of Council Bluffs, Iowa, a Municipal Corporation, that the seal affixed hereto is the seal of said Municipal Corporation; that said instrument was signed and sealed on behalf of the said City of Council Bluffs, Iowa, by authority of its City Council; and that said Matthew J. Walsh and said Jodi Quakenbush, as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said City, by it and by them voluntarily executed.

\_\_\_\_\_  
Notary Public in and for said State



## Council Communication

Department: Public Works Admin  
Case/Project No.: FY15-19  
Submitted by: Matthew Cox, City  
Engineer

Resolution 17-167

Council Action: 7/24/2017

### Description

Resolution accepting the bid of Hawkins Construction Co. in the amount of \$2,563,803.92 for the 9<sup>th</sup> and 10<sup>th</sup> Street Bridges over Indian Creek. Project # FY15-19.

### Background/Discussion

On June 20, 2017 bids were received by the DOT. Please see attached bid results.

This project was previously bid on October 18, 2016. Only two bids were received and both exceeded the Engineer's estimate by more than 30%. Public Works recommended that the bids be rejected and to rebid the project with a more flexible winter construction period. The rebid attracted several bidders and resulted in the City saving over \$700,000 with the low bid.

The Iowa DOT annually makes Federal and State funds available for the purposes of rehabilitating or replacing structurally deficient or functionally obsolete bridges. Bridges are ranked to receive funding based on a priority point system.

The 9<sup>th</sup> and 10<sup>th</sup> Street Bridges over Indian Creek (FHWA Structure #'s 504040 and 504045) ranked high enough among other bridges in the state to qualify for participation in the program.

The Indian Creek box under Creek Top is currently spanned by bridges at 9<sup>th</sup> and 10<sup>th</sup> Street. Both of the bridges and concrete box are in poor condition. This project will replace the bridges by reconstructing a section of the concrete box, allowing the bridges to be eliminated. Permanent and temporary easements have been acquired to construct and maintain the proposed concrete box.

Highway Bridge Program funds allow for 80% funding for construction of the 9<sup>th</sup> and 10<sup>th</sup> Street Bridge replacement with maximum eligible costs of \$2,000,000.00.

This project is in the FY15 & FY16 CIP and includes a budget of \$1,350,000 in sales tax funds for engineering, right-of-way, and the City's share of construction.

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Bid Results	Other	7/13/2017
Resolution 17-167	Resolution	7/18/2017

## BID RESULTS

Hawkins Construction Co., Omaha, NE	\$2,563,803.92
Valley Corporation, Valley, NE	\$2,926,169.74
United Contractors Inc. and Subsidiaries, Grimes, IA	\$3,187,383.10
Godbersen-Smith Construction Co. and Subsidiaries, Ida Grove, IA	\$3,699,447.90
Jensen Construction Co., Des Moines, IA	\$3,812,789.25
Iowa Bridge and Culvert, L.C., Washington, IA	\$4,104,872.15
Engineer's Estimate	\$2,496,295.80

**R E S O L U T I O N**  
**NO 17-167**

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK  
TO EXECUTE AN AGREEMENT WITH  
HAWKINS CONSTRUCTION CO. FOR THE  
9<sup>TH</sup> AND 10<sup>TH</sup> STREET BRIDGES OVER INDIAN CREEK  
PROJECT #FY15-19**

WHEREAS, the plans, specifications, and form of contract for the 9<sup>th</sup> and 10<sup>th</sup> Street Bridges over Indian Creek are on file in the office of the City Clerk; and

WHEREAS, a Notice of Public Hearing was published, as required by law, and a public hearing was held on June 12, 2017 and the plans, specifications and form of contract were approved; and

WHEREAS, Hawkins Construction Co. has submitted a low bid in the amount of \$2,563,803.92 for this contract.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

That the bid of Hawkins Construction Co. in the amount of \$2,563,803.92 is hereby accepted as the lowest and best bid received for said work; and

BE IT FURTHER RESOLVED

That the City Council does hereby award the contract in connection with the 9<sup>th</sup> and 10<sup>th</sup> Street Bridges over Indian Creek; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement with Hawkins Construction Co. for and on behalf of the City of Council Bluffs, upon approval by the City Attorney of the certificate of insurance and payment and performance bonds as required by the contract specifications.

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the 1989 Local Option Sales Tax Ballot and as such this is an appropriate expenditure of the Local Option Sales Tax Revenues.

ADOPTED  
AND  
APPROVED

July 24, 2017

\_\_\_\_\_  
Matthew J. Walsh, Mayor

ATTEST:

\_\_\_\_\_  
Jodi Quakenbush, City Clerk

## Council Communication

Department: Police

Case/Project No.: PD 18-01

Submitted by: Tim Carmody, Chief  
of Police

Resolution 17-168

Council Action: 7/24/2017

### Description

Resolution accepting the bid of Olsson Associates in the amount of \$34,422 to provide Testing & Special Inspections services for the Police Department Headquarters project. Project# PD18-01.

### Background/Discussion

- In September 2015 a team from the Police Department, a citizen study group, and other City staff began working with an architecture team to conduct a needs assessment to determine the needs and scope of a new police headquarters and site selection.
- In May 2016 the citizens of Council Bluffs approved a \$20 million bond to fund acquisition of the land, as well as the design and construction of the new police headquarters.
- In July 2016 a design team was selected and approved by Council. The team, comprised of the internal planning team from the City and Police Department, Hoefer Wysocki Architecture and Project Advocates have diligently worked on the final design of the facility.
- On July 11, 2017 two sealed bids were received in the office of the City Clerk for the Police Department Headquarters for this bid package – Project #PD18-01 as follows:
- The budget projection for these services was \$42,665. Unit prices were obtained. The City will only pay for services performed, not to exceed the budgeted amount - \$42, 665. The expenses are already included in the overall budget for the project. The project is on schedule and under budget.

The project schedule is as follows: Award this bid pkg. July 24, 2017

Construction began	July 11, 2017	Testing & SI Start
July 25, 2017	Certificate of Occupancy	Nov. 9, 2018
Final Completion	Dec. 10, 2018	

### Recommendation

Approval of this resolution.

### ATTACHMENTS:

Description	Type	Upload Date
Resolution 17-168	Resolution	7/21/2017

**RESOLUTION**  
**NO 17-168**

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK  
TO EXECUTE AN AGREEMENT WITH OLSSON & ASSOCIATES, TO  
PROVIDE TESTING & SPECIAL INSPECTIONS FOR THE POLICE  
DEPARTMENT HEADQUARTERS PROJECT #PD 18-01**

- WHEREAS, the plans, specifications, form of contract and cost estimate are on file in the office of the City Clerk; and
- WHEREAS, a Notice of Public Hearing was published as required by law, and a public hearing was held on June 26, 2017; and
- WHEREAS, Olsson & Associates has submitted a qualified low base bid in the amount of \$34,422 for this contract; and
- WHEREAS, The number of tests to be performed has been estimated  
The exact number and amount are unknown, but shall not exceed the budgeted amount of \$42,665.

NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

That the bid of Olsson & Associates in the amount of \$34,422 is hereby accepted as the lowest and best bid received for said work; and

BE IT FURTHER RESOLVED

The total amount for these services shall not exceed \$42,665; and

BE IT FURTHER RESOLVED

That the City Council does hereby award the contract in connection with the Police Department Headquarters Project; and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement with Sampson Construction Company for and on behalf of the City of Council Bluffs,

AND BE IT FURTHER RESOLVED

That the aforementioned project is encompassed by the language of the General Obligation Bond approved by voters May 3, 2016 and as such this is an appropriate expenditure of the that Bond.

ADOPTED  
AND  
APPROVED

July 24, 2017

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Matthew J. Walsh, Mayor

ATTEST:

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Jodi Quakenbush, City Clerk

## Council Communication

Department: Parks and Recreation

Case/Project No.:

Submitted by: Larry Foster

Resolution 17-169

Council Action: 7/24/2017

### Description

Resolution authorizing the Mayor to enter into cooperative agreement with IDOT, for Phase I-Realignment of Dodge Riverside Golf Club as required to accommodate IDOT Project IMN-029-3(211)54OE-78.

### Background/Discussion

The Iowa Department of Transportation is advancing significant improvements to the I-480 and I-29 interchange and expanding portions of I-29. This project, IMN-029-3(211)54-DE-78, impacts the City of Council Bluffs Dodge Riverside Golf Club. Specifically, the IDOT project will impact the existing #13 green and adjacent elements, #14 tee and portions of the #14 fairway. As a result, these sections of the course must be realigned to accommodate the final IDOT project grades and the relocated frontage road.

Through the joint efforts of the City and IDOT, a course realignment concept has been developed that will accommodate the IDOT required adjustments. This concept also minimizes course disruption and the resultant revenue losses. The redesign was authored by Wyss and Associates, golf course architects, with input from the course staff.

The concept accomplishes two primary objectives. First, the new alignment maintains the course's current Par72 rating.

Additionally, the course construction activities are phased to allow the course to be played as a full 18 hole facility throughout both the golf course and Interstate renovations. Phase I of this project addresses changes to the existing hole #13. These include construction of a temporary green, realignment of a tee box and development of a new fairway connecting the new tee and green. This work is to be accomplished during the 2017 season. In the following Phase II, play will be diverted to the new #13 alignment, allowing the existing #13 green and its adjacent features to be removed from play and reconstructed, along with the #14 tee area.

The attached Phase I Agreement, 2017-16-191, illustrates the relationship between the City and IDOT for this first phase. Under this Agreement, IDOT will reimburse the City for the costs associated with Phase I, estimated not to exceed \$109,000.00. The City will design, secure a contractor, manage construction and provide other services.

Once plans and cost are finalized for the realignment of the final #13 green and adjacent elements and the #14 tees and fairway, these items will be incorporated into a Phase II Agreement and forwarded for Council review and action.

This project is programmed to be funded in the Capital Improvement Plan, FY 17-18, PR-18-12, Golf Course Renovation-Phase I, in the amount of \$159,000.00. The funding will come from state funds provided by the Iowa Department of Transportation.

Estimate of Probable Cost for Phase I - \$109,000.00

### Recommendation

I recommend that the Mayor enter into cooperative agreement number 2017-16-191 with the Iowa Department of Transportation for the Phase I-Realignment of Dodge Riverside Golf Club.

### ATTACHMENTS:

Description	Type	Upload Date
Agreement	Agreement	7/17/2017
Map	Map	7/18/2017
Resolution 17-169	Resolution	7/18/2017



February

**IOWA DEPARTMENT OF TRANSPORTATION  
Cooperative Agreement  
For Primary Road Project**

County	Pottawattamie
City	Council Bluffs
Project No.	IMN-029-3(211)54--0E-78
Iowa DOT	
Agreement No.	2017-16-191
Staff Action No.	

This Agreement, is entered into by and between the Iowa Department of Transportation, hereinafter designated the "DOT", and the city of Council Bluffs, Iowa, a Local Public Agency, hereafter designated the "LPA" in accordance with Iowa Code Chapters 28E, 306, 306A and 313.4 as applicable;

The LPA proposes to establish or make improvements to the Dodge Riverside Golf Club within Pottawattamie County, Iowa; and

The LPA and the DOT are willing to jointly participate in Phase 1 - realignment of Dodge Riverside Golf Club project, in the manner hereinafter provided; and

This Agreement reflects the current concept of this project which is subject to modification by mutual agreement between the LPA and the DOT; and

Therefore, it is agreed as follows:

**1. Project Information**

- a. The LPA shall be the lead local governmental agency for carrying out the provisions of this agreement.
- b. All notices required under this agreement shall be made in writing to the DOT's and/or the LPA's contact person. The DOT's contact person shall be the District 4 Engineer, Scott Schram. The LPA's contact person shall be the Parks and Recreation Director, Larry Foster.
- c. The LPA shall be responsible for the development and completion of the following described primary highway project:

Reconstruction at Dodge Riverside Golf Club to accommodate construction of I-29 in Council Bluffs. The project provides for construction of a temporary green and associated improvements (Phase 1) as shown on Exhibit A.

A future agreement will be negotiated for construction of the final green and new tee boxes, bunkers and other features (Phase 2).

**2. Project Costs**

- a. The DOT will contribute an estimated \$109,000 toward the project costs for survey, testing, engineering and design, construction, and contract administration to construct the temporary green and associated improvements. Should the actual costs exceed 110% of the estimate then the DOT and the LPA shall agree on the division of increased costs.
- b. The LPA will bear all costs except those allocated to the DOT under other terms of this Agreement.

### **3. Environmental, Right-of-Way, Permits and Other Requirements**

- a. The LPA shall obtain all project permits and / or approvals, when necessary, from the Iowa Department of Cultural Affairs (State Historical Society of Iowa; State Historic Preservation Officer), Iowa Department of Natural Resources, U.S. Coast Guard, U.S. Army Corps of Engineers, or other State or Federal agencies as may be required.
- b. If the LPA has completed a Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the FIS is modified, amended or revised in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the modification, amendment or revision to the DOT. If the LPA does not have a detailed Flood Insurance Study (FIS) for an area which is affected by the proposed Primary Highway project and the LPA does adopt an FIS in an area affected by the project after the date of this Agreement, the LPA shall promptly provide notice of the FIS to the DOT.

### **4. Project Design**

- a. The LPA or its consultant shall be responsible for the design of all proposed improvements.

### **5. Bid Letting**

- a. The LPA shall conduct the contractor selection process in compliance with applicable laws, ordinances and administrative rules. The LPA shall make a good faith effort to secure at least three contractor quotes and award contracts for the project work. DOT concurrence in the award must be obtained prior to the award. The LPA shall provide the DOT file copies of project letting documents within five (5) days of letting.
- b. The LPA shall include in their Notice to Bidders that Sales Tax Exemption Certificates will be issued, as provided for by Iowa Code section 423.3, subsection 80. The LPA shall be responsible for obtaining the sales tax exemption certificates through the Iowa Department of Revenue and Finance. The LPA shall issue these certificates to the successful bidder and any subcontractors to enable them to purchase qualifying materials for the project free of sales tax.
- c. The LPA shall be the contracting authority.

### **6. Construction & Maintenance**

- a. The LPA shall be responsible for the inspection of the project.

### **7. Traffic Control**

- a. Construction activities will not disrupt traffic on the Interstate or local streets.

### **8. Payments and Reimbursements**

- a. The LPA shall be responsible for making initial payments to the consultant(s) and contractor(s) for all project costs incurred in the development and construction of the project. After payments have been made, the LPA may submit to the DOT periodic itemized claims for reimbursement for eligible project activities. Reimbursement claims shall include certification by a Professional Engineer licensed to practice in the State of Iowa that all eligible project activities for which reimbursement is requested have been paid in full and completed in substantial compliance with the terms of this agreement.

- b. The DOT shall reimburse the LPA for properly documented and certified claims for eligible project activity costs. The DOT may withhold up to 5% of the Federal and / or State share of construction costs, either by state warrant or by crediting other accounts from which payment may have been initially made. If upon final audit, the DOT determines the LPA has been overpaid, the LPA shall reimburse the overpaid amount to the DOT. After the final audit or review is complete and after the LPA has provided all required paperwork, the DOT will release the Federal or State funds withheld.
- c. Upon completion of the project, a Professional Engineer licensed to practice in the State of Iowa shall certify in writing to the DOT that the project activities were completed in substantial compliance with the plans and specifications set out in this agreement. Final reimbursement of State and / or Federal funds shall be made only after the DOT accepts the project as complete.

## **9. General Provisions**

- a. The LPA shall maintain records, documents, and other evidence in support of the work performed under the terms of this agreement. All accounting practices applied and all records maintained will be in accordance with generally accepted accounting principles and procedures. Documentation shall be made available for inspection and audit by authorized representatives of the DOT and / or the Federal Highway Administration (FHWA), or their designees at all reasonable times. The LPA shall provide copies of said records and documents to the DOT upon request. The LPA shall also require its contractors to permit authorized representatives of the DOT and / or the FHWA to inspect all work materials, records, and any other data with regard to agreement related costs, revenues and operating sources. Such documents shall be retained for at least 3 years from the date of FHWA approval of the final amendment / modification to the project in the FHWA's Fiscal Management Information System (FMIS). Upon receipt of such approval by FHWA, the DOT will notify the LPA of the record retention date.
- b. In accordance with Title VI of the Civil Rights Acts of 1964 and Iowa Code Chapter 216 and associated subsequent nondiscrimination laws, regulations and executive orders, the LPA shall not discriminate against any person on the basis of race, color, creed, age, sex, sexual orientation, gender identity, national origin, religion, pregnancy, or disability.
- c. The LPA agrees to indemnify, defend and hold the DOT harmless from any action or liability arising out of the design, construction, maintenance, placement of traffic control devices, inspection, or use of this project. This agreement to indemnify, defend and hold harmless applies to all aspects of the DOT's application review and approval process, plan and construction reviews, and funding participation.
- d. If any part of this agreement is found to be void and unenforceable then the remaining provisions of this agreement shall remain in effect.
- e. This agreement is not assignable without the prior written consent of the DOT.
- f. It is the intent of both (all) parties that no third party beneficiaries be created by this Agreement.
- g. In case of dispute concerning the terms of this agreement, the parties shall submit the matter to arbitration pursuant to Iowa Code Chapter 679A. Either party has the right to submit the matter to arbitration after ten (10) days notice to the other party of their intent to seek arbitration. The written notice must include a precise statement of the disputed question. The DOT and the LPA agree to be bound by the decision of the appointed arbitrator. Neither party may seek any remedy with the State or Federal courts absent exhaustion of the provisions of this paragraph for arbitration.

February

- h. This Agreement may be executed in (two) counterparts, each of which so executed will be deemed to be an original.
- i. This Agreement, as well as the unaffected provisions of any previous agreement(s), addendum(s), and/or amendment(s); represents the entire Agreement between the LPA and DOT regarding this project. All previously executed agreements will remain in effect except as amended herein. Any subsequent change or modification to the terms of this Agreement will be in the form of a duly executed amendment to this document.

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**IN WITNESS WHEREOF**, each of the parties hereto has executed Agreement No. 2017-16-191 as of the date shown opposite its signature below.

**CITY OF COUNCIL BLUFFS:**

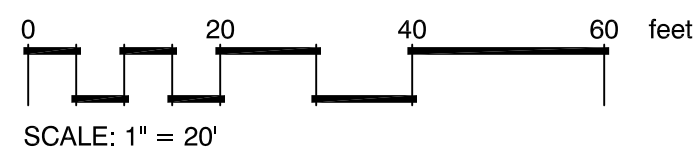
By: \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_.  
Title: Mayor

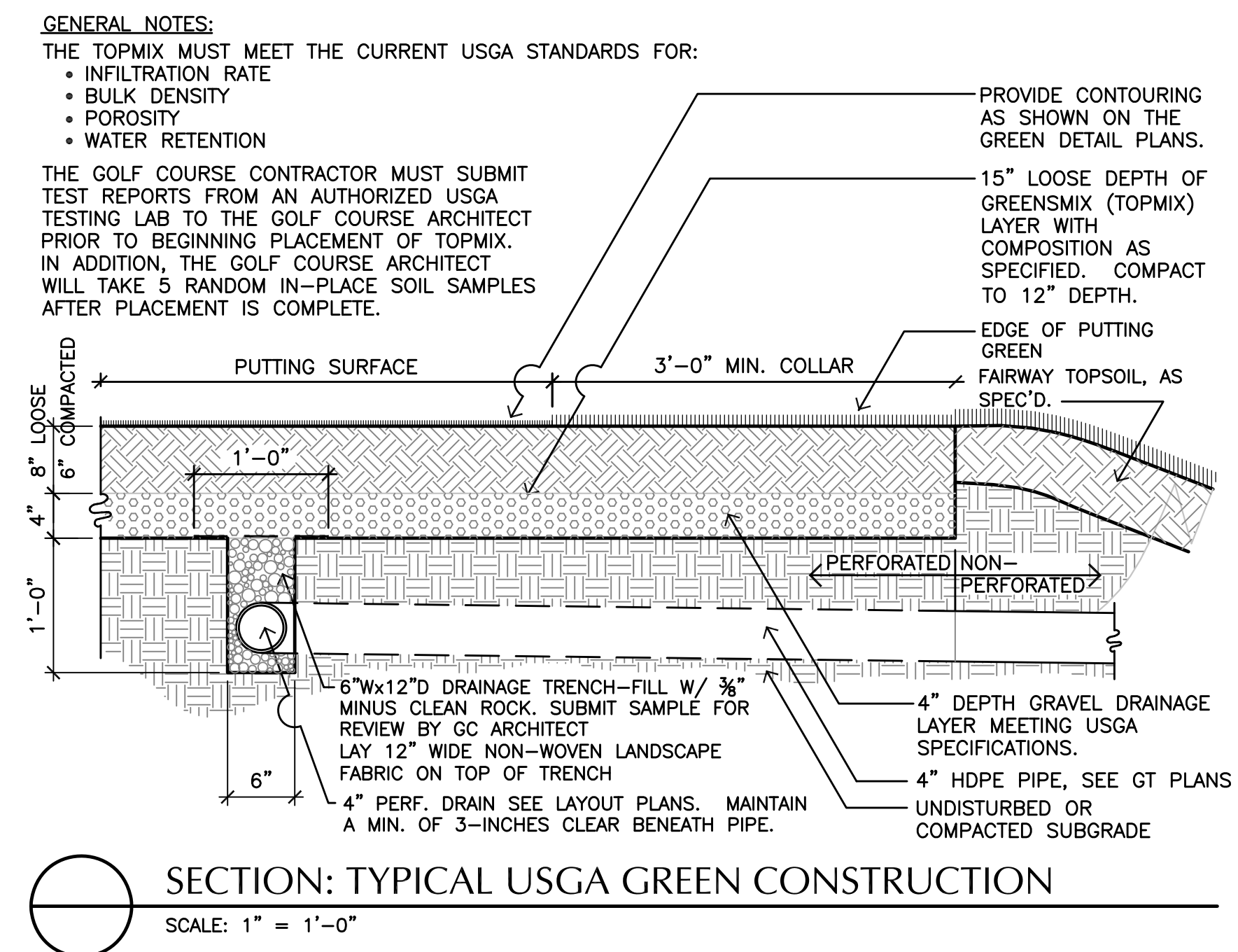
I, \_\_\_\_\_, certify that I am the Clerk of the City, and that \_\_\_\_\_,  
who signed said Agreement for and on behalf of the City was duly authorized to execute the same on the  
day of \_\_\_\_\_, 20\_\_\_\_.

Signed: \_\_\_\_\_  
City Clerk of Council Bluffs, Iowa.

**IOWA DEPARTMENT OF TRANSPORTATION:**

By: \_\_\_\_\_ Date \_\_\_\_\_, 20\_\_\_\_.  
Scott Schram  
District Engineer  
District 4





# Dodge Riverside Golf Course Renovations

Council Bluffs, IA

Hole #13  
Temporary  
Green

DESIGNED BY:	PHW
DRAWN BY:	CMW
APPROVED BY:	PHW
PROJECT NO.	17201
DATE:	July 2017

NO.	REVISION	DATE

Sub Sheet  
**LA1**  
Sheet  
OF

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RESOLUTION NO. 17-169

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO COOPERATIVE AGREEMENT NUMBER 2017-16-191 WITH THE IOWA DEPARTMENT OF TRANSPORTATION, FOR THE PHASE I - REALIGNMENT OF DODGE RIVERSIDE GOLF CLUB AS REQUIRED TO ACCOMMODATE IOWA DOT PROJECT IMN-029-3(211)54OE-78.

WHEREAS, the Iowa DOT is progressing with project IMN-029-3(211)54OE-78 to reconstruct portions of I-480 and I-29; and

WHEREAS, the reconstruction of I-480 and I-29 is of benefit to the City; and

WHEREAS, the project relocates the Interstate frontage road currently adjacent to the Dodge Riverside Golf Club; and

WHEREAS, the relocation of this frontage road requires the relocation of portions of the Dodge Riverside Golf Club including the existing #13 green and adjacent elements, the #14 tee box and portions of the #14 fairway; and

WHEREAS, the City and the Iowa Department of Transportation have coordinated on a redesign of the course elements impacted by the Iowa DOT project; and

WHEREAS, Phase I of this redesign is finalized and ready to proceed with contractor selection and construction; and

WHEREAS, The City of Council Bluffs and the Iowa DOT have drafted an Agreement identifying each parties rights and responsibilities for Phase I – Realignment of the Dodge Riverside Golf Club

NOW, THEREFORE BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized, empowered and directed to enter into cooperative agreement number 2017-16-191 with the Iowa Department of Transportation, for Phase I – Realignment of Dodge Riverside Golf Club as required to accommodate Iowa DOT Project IMN-029-3(211)54OE-78.

ADOPTED  
AND  
APPROVED July 24, 2017

Attest: Matthew J. Walsh Mayor  
Jodi Quakenbush City Clerk

## Council Communication

Department: Legal  
Case/Project No.:  
Submitted by: Legal Department

Resolution 17-170

Council Action: 7/24/2017

### Description

Resolution authorizing the Mayor to execute an agreement with Studio 15 for third party inspection services at the Vandalay project site.

### Background/Discussion

The Permits and Inspections Division wishes to contract third party inspection services for the completion of previously permitted buildings, The Mega Cub and Building 3A, at the Vandalay construction site at 10410 Bunge Road.

Due to the large volume of work that our office is required to perform within the city limits and at the Vandalay site, and the travel distance required to physically make inspections at the Vandalay site, our staff is unable to make all required inspections at all of our construction sites. This issue alone necessitates the hiring of a third party firm to handle this project.

Studio 15 was selected through a structured RFQ and interview process by the City and Vandalay representatives and was chosen as the best and most qualified applicant for inspection services.

Vandalay has agreed to pay for the costs of the third party inspection services contract.

### Recommendation

Approval of this Resolution

### ATTACHMENTS:

Description	Type	Upload Date
Agreement	Agreement	7/18/2017
Resolution 17-170	Resolution	7/18/2017



**ConsensusDocs 247**  
**STANDARD AGREEMENT BETWEEN OWNER AND CONSULTANT**

**TABLE OF ARTICLES**

1. AGREEMENT
2. GENERAL PROVISIONS
3. CONSULTANT'S RESPONSIBILITIES
4. SUBCONTRACTS
5. OWNER'S RESPONSIBILITIES
6. INDEMNITY, INSURANCE, AND WAIVERS
7. PAYMENT
8. DISPUTE RESOLUTION
9. SUSPENSION, NOTICE TO CURE, AND TERMINATION
10. MISCELLANEOUS

Job Number: [\_\_\_\_\_]

Account Code: [\_\_\_\_\_]

**ARTICLE 1 - AGREEMENT**

This Agreement is made this 24th day of July in the year 2017 by and between

OWNER:

City of Council Bluffs, Iowa  
209 Pearl Street  
Council Bluffs, IA 51503

and CONSULTANT:

Studio 15 Commercial Interiors, Inc.  
12 Nickeh Drive, Suite 200  
Cherokee, NC 28719

for third-party building inspection services in connection with the following  
PROJECT, Google Data Center, at the following WORKSITE, Council Bluffs, Iowa.

1.1 NOTICE. Notice to the Parties shall be given at the above addresses.

1.2 TERM. The Initial Term of this Agreement shall be for one (1) year, commencing on the date written above. This Agreement shall be automatically renewed for successive one (1) year terms thereafter (each a "Renewal Term") until and unless either Party provides the other Party with ninety (90) days prior written notice to the end of the Initial Term or the Renewal Term.



## ARTICLE 2 - GENERAL PROVISIONS

2.1 PARTY RELATIONSHIP AND ETHICS. The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing and shall take all actions reasonably necessary to perform this Agreement in an economical and expeditious manner consistent with the Contract Documents. Consultant agrees to procure or furnish, as permitted by the Laws, the Services as set forth below.

2.1.1 Consultant represents that it is an independent contractor and that it is familiar with the type of Services it is undertaking.

2.1.2 Neither Consultant nor any of its agents or employees shall act on behalf of or in the name of Owner unless authorized in writing by Owner or Owner's Representative.

2.1.3 The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party, and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers, and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

## 2.2 DEFINITIONS

2.2.1 "Agreement" means this ConsensusDocs 247 Standard Agreement Between Owner and Consultant, as modified, amendments, exhibits, addenda, and attachments made part of this agreement upon its execution.

2.2.1.1 The following attached exhibits are a part of this Agreement:

EXHIBIT A: Description of Services to be provided, Proposal dated July, 2017

EXHIBIT B: INTENTIONALLY OMITTED.

EXHIBIT C: INTENTIONALLY OMITTED.

EXHIBIT D: Insurance, Certificate of Insurance

EXHIBIT E: Fee schedule – See EXHIBIT A.

2.2.2 "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.2.3 The "Consultant" is the person or entity identified as such in ARTICLE 1.

2.2.4 "Day" means calendar day.

2.2.5 "Laws" mean federal, state, and local laws, ordinances, codes, rules and regulations applicable to the Services with which Consultant must comply that are enacted as of the Agreement date.



2.2.6 "Others" means other contractors and all persons at the Worksite who are not employed by Consultant, its Subcontractors, or material suppliers.

2.2.7 The "Owner" is the person or entity identified in ARTICLE 1. Under this Agreement, the Owner is not the owner of the Project or the real property upon which the Project is being constructed, but, rather, is the municipality within the jurisdiction of which the Project is located and which has authority to conduct building inspections; issue building permits, certificates of occupancy, and temporary certificates of occupancy; and take other actions with respect to the Project

2.2.8 The "Parties" are collectively Owner and Consultant.

2.2.9 The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements in connection with which Consultant is to perform the Services under this Agreement.

2.2.10 "Services" are those defined in Exhibit A.

2.2.11 A "Subcontractor" is a person or entity retained by Consultant as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Services. The term Subcontractor does not include any separate contractor employed by Owner or any separate contractor's subcontractors.

2.2.12 A "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or another Subsubcontractor to perform any portion of the Subcontractor's work.

2.2.13 "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the U.S. government as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.2.14 "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Services are to be performed.

### **ARTICLE 3 - CONSULTANT'S RESPONSIBILITIES**

3.1 SERVICES. Consultant shall perform the consulting services required for the Project, as more fully described in Exhibit A. Consultant shall perform such Services in a timely manner, and, to the extent required by Law, Consultant shall be appropriately licensed and perform such Services under the direction of an appropriately licensed professional or business.

#### **3.2 REPORTS**

3.2.1 Consultant shall submit any reports and other deliverables called for by Exhibit A or mutually agreed to by the Parties. To the extent required by Law, such deliverables shall be prepared under the direction of and shall bear the seal of an appropriately licensed professional.

3.2.2 Consultant shall treat such written reports and other documents, including supporting data and field logs, as confidential, and shall distribute copies of them only to Owner and any other party authorized in writing by Owner to receive copies, except Consultant shall be entitled to distribute them as required by local Laws and to provide documents as otherwise required by Law. Reports



and other documents created by Consultant are prepared solely for the use of Owner, and the consultants and contractors retained by Owner, for the Worksite, and such reports and other documents are not for the benefit of any third party not expressly identified in this Agreement.

3.3 Unless expressly assigned by this Agreement, Consultant does not assume any duties, responsibilities, or obligations with regard to the Project which by custom or contract are vested in governmental authorities or other parties.

3.4 Consultant shall not provide supervision of or direction to Owner's or any contractor's personnel, consultants, or contractors, nor assume responsibility for Owner's or any contractor's means, methods, techniques, sequences, or procedures of construction or safety programs.

### 3.5 STANDARD OF CARE

3.5.1 Consultant shall perform all Services in accordance with the standard of professional skill and care required for services of this type for a Project of similar size, scope, and complexity, during the time and locality in which the Services are provided.

3.5.2 Consultant shall not be responsible for: (a) any errors or omissions of any party involved in the design or construction of the Project who are not under the direct control or authority of Consultant, unless such errors or omissions were a direct result of the party's reliance on Services or recommendations of Consultant that did not comport with the standard of care required by subsection immediately above; or (b) any failure of Owner or its consultants, constructors, or contractors, and their respective agents or employees, to comply with the recommendations, written or oral, made by Consultant.

3.6 SAFETY. Consultant shall have overall responsibility for safety precautions and programs in the performance of the Services. Consultant's subcontractors shall also be responsible for the safety of persons or property in the performance of their work, and for compliance with the provisions of Laws. Consultant shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at the Worksite; materials and equipment stored at on-site or off-site locations for use in the Project; and property located at the Worksite and adjacent to Worksite areas, whether or not the property is part of the Project. Consultant is not responsible for general Worksite safety and does not have a duty to stop the work of any contractors, other consultants, or other third parties. If, however, Consultant observes any condition(s) which Consultant believes, in its reasonable judgment, would justify stopping the Work, Consultant will promptly report that to Owner so that Owner can determine whether to issue a stop work order.

3.7 RIGHT TO SUBCONTRACT SERVICES. With the prior written approval of Owner, Consultant may subcontract such Services as Consultant deems necessary to meet its obligations under this Agreement, and to the extent required by Law, such Subcontractors shall be appropriately licensed.

3.8 AUTHORIZED REPRESENTATIVE. Consultant shall designate in writing a person empowered to act as Consultant's representative with respect to its performance under this Agreement. Consultant's representative is D. Erik Sneed. Such person shall have complete authority to bind Consultant under this Agreement. If Consultant wants to change its representative or the representative's authority, Consultant shall provide written notice to Owner requesting consent to the proposed changes. Owner shall not unreasonably withhold consent to Consultant's proposed changes.



3.9 SITE DAMAGE. Consultant shall take reasonable precautions to minimize damage to the Site. However, Owner recognizes that, depending upon the types of Services, some damage may occur in the normal course of the Services.

3.10 TIME. All Services required by this Agreement, including delivery of all reports to Owner, shall be completed in a timely manner within the construction duration of the Project, time being of the essence of this Agreement. If Consultant is delayed by any cause beyond the control of Consultant, Consultant shall be entitled to an equitable extension of the time set forth above. Examples of causes beyond the control of Consultant include, but are not limited to, the following: (a) acts or omissions of Owner or others; (b) changes in the Services or the sequencing of the Services ordered by Owner, or arising from decisions of Owner that impact the time of performance of the Services; (c) encountering Hazardous Waste unanticipated by Consultant, or concealed or unknown conditions; (d) delay authorized by Owner pending dispute resolution or suspension by Owner; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving Consultant; (g) general labor disputes impacting the Project or Services but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions; (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated.

3.10.1 In addition, if Consultant incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Consultant shall be entitled to an equitable adjustment in Consultant's Fee.

3.10.2 If delays are encountered for any reason, the Parties agree to take reasonable steps to mitigate the effect of such delays.

3.11 SAMPLES. In the event samples are collected, such samples are Owner's property. Upon completion of testing, samples shall be either:

☐ retained and stored by Consultant until ☐ (date),

☒ shipped to Owner, or

☐ discarded.

Consultant shall be responsible for the proper delivery, handling, storage, removal, and disposal of all substances and materials brought to the Worksite by Consultant for the performance of its Services. Disposal of samples or sampling process byproducts by Consultant shall be done in accordance with applicable Laws and regulations.

### 3.12 HAZARDOUS WASTE

3.12.1 The term Hazardous Waste has a specific legal meaning that applies to certain materials and can include listed wastes, characteristic wastes, universal wastes, and mixed wastes as defined by the United States Environmental Protection Agency. Consultant shall not be obligated to commence or continue Services until any Hazardous Waste discovered at the Worksite has been removed, rendered harmless, or determined to be harmless by Owner as certified by an independent testing laboratory, if applicable.

3.12.2 Owner represents that it has disclosed in writing to Consultant the existence of any Hazardous Waste known by Owner to exist on or near the Worksite. After commencing the Services, if unanticipated Hazardous Waste is discovered at the Worksite, Consultant shall be



entitled to immediately stop work in the affected area. Consultant shall promptly report the condition to Owner and, if required, the governmental agency with jurisdiction.

3.12.3 Consultant shall not be required to perform any Services relating to or in the area of unanticipated Hazardous Waste without written mutual agreement.

3.12.4 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the unanticipated material encountered and whether it is a Hazardous Waste requiring corrective measures or remedial actions. Such measures and actions shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Services of Consultant. Consultant shall resume work in the area affected by any unanticipated Hazardous Waste only after the unanticipated Hazardous Waste has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.

3.12.5 If Consultant incurs additional costs or is delayed due to the presence or remediation of unanticipated Hazardous Waste, Consultant shall be entitled to an equitable adjustment in Consultant's Fee.

3.12.6 To the extent permitted under section 6.1 and to the extent not caused by the negligent acts or omissions of Consultant, its Subcontractors, material suppliers, and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify and hold harmless Consultant, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure arising out of or relating to the performance of the Services in any area affected by Hazardous Waste.

3.12.7 Material Safety Data (MSD) sheets as required by Law and pertaining to materials or substances used or consumed in the performance of the Services, whether obtained by Consultant, Subcontractors, Owner, or Others, shall be maintained at the Worksite by Consultant and made available to Owner and Subcontractors.

3.12.8 During Consultant's performance of the Services, Consultant shall be responsible for the proper handling of all materials brought to the Worksite by Consultant.

3.13 BOOK AND RECORDS. Consultant shall maintain a complete set of all books, records, reports, photos, electronic data, and other records, including boring logs, field data, laboratory test data, and calculations prepared or used by Consultant with respect to the Project. Consultant's records shall be current, complete, and accurate. Owner shall be afforded reasonable access during normal business hours to all Consultant's records relating to this Agreement. Consultant shall preserve all such records for a period of three (3) years after the final payment or longer where required by Law.

3.14 OPINIONS OF COST. Consultant agrees to use reasonable skill and judgment in the preparation of cost estimates, but does not warrant or guarantee them.

3.15 COMPLIANCE WITH LAWS. Consultant shall give all notices and comply with all Laws at its own cost. Consultant shall be liable to Owner for all loss, cost, and expense attributable to any acts or omissions by Consultant, its employees, Subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including Owner, is received.





3.16 Consultant shall provide periodic written reports to Owner on the progress of the Services in such detail as is required by Owner and as agreed to by Owner and Consultant.

### 3.17 OWNERSHIP OF DOCUMENTS

3.17.1 OWNERSHIP OF DOCUMENTS. Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information ("Documents") prepared, provided, or procured by Consultant, its Subcontractors, or consultants and distributed to Owner for this Project, upon the making of final payment to Consultant or, in the event of termination under ARTICLE 9, upon payment for all sums due to Consultant pursuant to section 9.3.

3.17.2 INTENTIONALLY OMITTED.

3.17.3 USE OF DOCUMENTS IN EVENT OF TERMINATION. In the event of a termination of this Agreement pursuant to ARTICLE 9, Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under this section, provided payment has been made in accordance with the terms of this Agreement.

3.17.4 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF SERVICES. After completion of the Services, Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. Owner's use of the Documents without Consultant's involvement or on other projects is at Owner's sole risk, except for Consultant's indemnification obligations, and Owner shall indemnify and hold harmless Consultant, its Subcontractors and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

3.17.5 CONSULTANT'S USE OF DOCUMENTS. Consultant may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.17.6 Consultant shall obtain from its Subcontractors and consultants rights and rights of use that correspond to the rights given by Consultant to Owner in this Agreement, and Consultant shall provide evidence that such rights have been secured.

3.18 CONFIDENTIALITY. Unless compelled by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena, Consultant shall treat as confidential and not disclose to third persons, except Subcontractors, and Subsubcontractors as is necessary for the performance of the Services, or use for its own benefit any of Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to Consultant or which Consultant may acquire in connection with the Services. Owner shall treat Consultant's estimating systems and historical and parameter cost data that are disclosed to Owner in connection with the performance of this Agreement as confidential information. Owner and Consultant shall each specify those items to be treated as confidential and shall mark them as "Confidential." In the event of a legal compulsion or other order seeking disclosure of any Confidential Information, Consultant or Owner, as the case may be, shall promptly notify the other Party to permit that party's legal objection, if necessary.



3.19 ADDITIONAL SERVICES. Consultant shall provide or procure additional services, within the general scope of the Services described in Exhibit A, upon the request of Owner. A written agreement between Owner and Consultant shall define the extent of such additional services and the fees to be paid Consultant before they are performed by Consultant.

#### **ARTICLE 4 - SUBCONTRACTS**

Services not performed by Consultant with its own forces shall be performed by Subcontractors.

4.1 RETAINING SUBCONTRACTORS. Consultant shall not retain any Subcontractor to whom Owner has a reasonable and timely objection, provided that Consultant shall be entitled to an equitable adjustment in Consultant's Fees for any additional costs incurred by Consultant as a result of such objection. Owner may propose Subcontractors to be considered by Consultant. Consultant shall not be required to retain any Subcontractor to whom Consultant has a reasonable objection.

4.2 MANAGEMENT OF SUBCONTRACTORS. Consultant shall be responsible for the management of the Subcontractors in the performance of their work.

##### **4.3 CONTINGENT ASSIGNMENT OF SUBCONTRACT**

4.3.1 If this Agreement is terminated, each subcontract agreement shall be assigned by Consultant to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to sections 9.2 or 9.3; and (b) Owner accepts such assignment, after termination by notifying the Subcontractor and Consultant in writing, and assumes all rights and obligations of Consultant pursuant to each subcontract agreement.

4.3.2 If Owner accepts such an assignment, and the Services have been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

4.4 BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS. Consultant agrees to bind every Subcontractor and material supplier (and require every Subcontractor to so bind its subsubcontractors and material suppliers) to all provisions of this Agreement as they apply to the Subcontractors' or material Suppliers' portions of the Services.

#### **ARTICLE 5 - OWNER'S RESPONSIBILITIES**

5.1 ACCESS. Owner shall provide Consultant with reasonable access to the Worksite so as to assist Consultant in its performance of all tasks reasonably necessary for the completion of Services under this Agreement.

5.2 UTILITIES. Consultant, along with any Subcontractors, shall arrange to locate and mark all underground utilities. This work will be performed in accordance with the individual state or local legally-authorized utility locating service known variously as "One Call," "Miss Utility" or other such entitled services. Underground utilities not located and marked by the state or local legally-authorized locating services will be located through the use of a private utility locator for which Consultant will be compensated. Underground utilities or subterranean structures owned or installed by Owner shall be located and marked by Owner at his/her expense. No subsurface exploration services will commence until all known underground utilities are located and marked. Consultant shall take reasonable precautions to avoid known underground utilities and subterranean structures.





5.3 OWNER'S REPRESENTATIVE. Owner's Representative is Steve Carmichael, Chief Building Inspector. Owner's Representative shall: (a) be fully acquainted with the Project, Services, and Worksite; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner in all matters requiring Owner's approval, authorization, or written notice. If Owner changes its Representative or the Representative's authority, Owner shall promptly notify Consultant in writing in advance.

5.4 INFORMATION AND SERVICES PROVIDED BY OWNER. Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

5.5 WORKSITE INFORMATION. To the extent Owner has obtained, or is required by this Agreement to obtain, the following Worksite information, Owner shall provide such information at Owner's expense and with reasonable promptness:

5.5.1 Information describing the physical characteristics of the site, including surveys, Worksite evaluations, legal descriptions, data, notes, maps, or drawings depicting existing surface and/or subsurface conditions, boring logs, site photos, geophysical logs, lab tests, environmental studies, reports and investigation findings, and field observations, and any other data, reports, or information relevant to the Services. Legal descriptions shall include easements, title restrictions, boundaries and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys and other features relevant to the Services. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, surface and subsurface information, grades, contours and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by Consultant in planning and/or performing the Services.

5.5.2 Tests, inspections, and other reports dealing with environmental matters, Hazardous Waste, and other existing conditions, including structural, mechanical, and chemical tests, required by this Agreement or by Law; and

5.5.3 Any other information or services requested in writing by Consultant which are required for Consultant's performance of the Services and under Owner's control.

5.6 MECHANICS AND CONSTRUCTION LIEN INFORMATION. Within seven (7) Days after receiving Consultant's written request, Owner shall provide Consultant with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property interests of the Worksite and the record legal title.

5.7 Owner shall provide insurance for the Project as provided in ARTICLE 6.

5.8 TAX EXEMPTION. If in accordance with Owner's direction Consultant claims an exemption for taxes, Owner shall indemnify and hold Consultant harmless for all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Consultant as a result of any action taken by Consultant in accordance with Owner's direction.

5.9 ELECTRONIC DOCUMENTS. If Owner requires that Owner and Consultant exchange documents and data in electronic or digital form, prior to any such exchange, Owner and Consultant shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate addendum, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c)



necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

## ARTICLE 6 - INDEMNITY, INSURANCE, AND WAIVERS

### 6.1 INDEMNITY

6.1.1 To the fullest extent permitted by Law, Consultant shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of the Services, but only to the extent caused by the negligent acts or omissions of Consultant, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Consultant shall not be required to indemnify or hold harmless the Indemnitees for any negligent acts or omissions of the Indemnitees. Consultant shall be entitled to reimbursement of any defense costs paid above Consultant's percentage of liability for the underlying claim to the extent provided for by the subsection below.

6.1.2 To the fullest extent permitted by Law, Owner shall indemnify and hold harmless Consultant, its officers, directors, or members, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of Services by Owner or others, but only to the extent caused by the negligent acts or omissions of Owner or others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

6.1.3 NO LIMITATION ON LIABILITY. In any and all claims against the Indemnitees by any employee of Consultant, anyone directly or indirectly employed by Consultant, or anyone for whose acts Consultant may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Consultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. However, Consultant's liability for any negligent professional acts, errors, or omissions shall be limited to the amount of fees paid to Consultant pursuant to this Agreement, or the amount of any applicable professional liability insurance, whichever is less.

### 6.2 INSURANCE

6.2.1 CONSULTANT'S LIABILITY INSURANCE. Before commencing the Services and as a condition precedent to payment, Consultant shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Professional Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL) providing the coverage and with the limits of liability reflected in Exhibit D.

6.2.2 Employers' Liability, Business Automobile Liability, and CGL coverage required under subsection 6.2.1 may be arranged under a single policy for the full limits required or by a



combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

6.2.3 Consultant shall maintain in effect all insurance coverage required under subsection 6.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If Consultant fails to obtain or maintain any insurance coverage required under this Agreement, Owner may purchase such coverage and charge the expense to Consultant or terminate this Agreement.

### 6.3 PROPERTY INSURANCE

6.3.1 Before commencing the Services, Owner shall cause the owner of the Project to obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name Consultant, Subcontractors, and Subsubcontractors as named insureds. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure (a) at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Consultant) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused; and (b) damage resulting from defective design, workmanship, or material and material or equipment stored offsite, onsite, or in transit. Consultant shall not be responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of Consultant, Subcontractors, and Subsubcontractors. This insurance shall remain in effect until final payment has been made or until no person or entity other than the owner of the Project has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Services shall not commence until the owner of the Project has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Services, Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

6.3.2 Owner and Consultant waive all rights against each other and their respective employees, agents, contractors, subcontractors, and subsubcontractors for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as Consultant may have for the failure of Owner to obtain and maintain property insurance in compliance with the subsection immediately above.

6.3.3 To the extent of Consultant's actual CGL coverage or one million dollars (\$1,000,000), whichever is less, Consultant shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Services, to the extent of the negligent acts or omissions of Consultant, Subcontractor or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

6.4 ROYALTIES, PATENTS, AND COPYRIGHTS. Consultant shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Consultant and used in the performance of the Services. Consultant shall defend, indemnify, and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify, and hold Consultant harmless from any suits or



claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner.

**6.5 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.** Except for damages mutually agreed upon by the Parties as liquidated damages and excluding losses covered by insurance required by the Agreement, Owner and Consultant agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive consequential damages including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. Consultant agrees to waive consequential damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following items of damages are excluded from this mutual waiver: None.

6.5.1 Owner and Consultant shall require similar waivers in contracts with Subcontractors and others retained for the Project.

## **ARTICLE 7 - PAYMENT**

7.1 Owner agrees to pay in accordance with Exhibit E for all Services and expenses provided by Consultant and authorized by Owner. Payment shall be due ten (10) Days from the date of receipt of Consultant's invoice.

7.2 **LATE PAYMENT.** Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project, unless addressed in Exhibit E, in which case that Exhibit shall take precedence.

7.3 **ESCALATION.** On each anniversary date following the commencement of the Agreement, the Compensation of the Agreement shall be adjusted by changes in the Consumer Price Index (CPI) reflecting percentage increases.

7.3.1 To receive the CPI adjustment, Consultant shall submit a request in writing to Owner no later than thirty (30) days after the anniversary date for that year.

7.3.2 The percent escalation allowable will be based on the percent change in the CPI for Urban Wage Earners and Clerical Workers, Current Series (CPI-W, U.S. City Average, All Items) published by the United States Department of Labor, Bureau of Labor Statistics. The index may be obtained from the U.S. Bureau of Labor Statistics' web site at [www.bls.gov](http://www.bls.gov).

7.3.3 The index month three (3) months prior to the anniversary month for the current year and the previous year shall be used to determine the percent increase.



## ARTICLE 8 - DISPUTE RESOLUTION

**8.1 SERVICES CONTINUANCE AND PAYMENT.** Unless otherwise agreed in writing, Consultant shall continue the Services during any dispute resolution proceedings. If Consultant continues to perform, Owner shall continue to make payments in accordance with the Agreement.

**8.2 DIRECT DISCUSSIONS.** If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days from the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not effected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute resolution procedures selected herein.

**8.3 MEDIATION.** If direct discussions pursuant to section 8.2 do not result in resolution of the matter, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

**8.4 BINDING DISPUTE RESOLUTION.** If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

**X ARBITRATION.** Unless the Parties mutually agree otherwise in writing, all claims, disputes and matters in question arising out of, or relating to, this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An award entered in an arbitration proceeding shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

**8.4.1 COSTS.** The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

**8.4.2 VENUE.** The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

**8.4.3** Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations.

**8.4.4** An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.





8.5 MULTIPARTY PROCEEDING. All Parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Services to provide for the joinder or consolidation of such dispute resolution proceedings.

8.6 LIEN RIGHTS. Nothing in this article shall limit any rights or remedies not expressly waived by Consultant which Consultant may have under lien Laws.

## **ARTICLE 9 - SUSPENSION, NOTICE TO CURE, AND TERMINATION**

### **9.1 SUSPENSION BY OWNER FOR CONVENIENCE**

9.1.1 Owner may order Consultant in writing to suspend, delay, or interrupt all or any part of the Services without cause for its convenience.

9.1.2 Adjustments caused by suspension, delay, or interruption shall be made for increases in Consultant's Fee. No adjustment shall be made if Consultant is or otherwise would have been responsible for the suspension, delay, or interruption of the Services, or if another provision of this Agreement is applied to render an equitable adjustment.

9.2 TERMINATION BY EITHER PARTY. Either Party may terminate this Agreement upon seven (7) days' written notice if the other Party materially breaches its terms through no fault of the initiating Party, or if Google notifies Owner that it will no longer reimburse Owner for the cost it incurs pursuant to this Agreement.

9.3 TERMINATION FOR OWNER'S CONVENIENCE. Upon seven (7) days' written notice, Owner may, without cause, terminate this Agreement with Consultant. If this Agreement is so terminated, Consultant may recover from Owner payment for all Services performed in accordance with this Agreement, all costs resulting from the termination, plus a premium payment as stated below, provided that Consultant has delivered to Owner all reports and supporting data prepared by Consultant, its consultants and contractors, for the Project. The premium payment shall be: twenty five thousand dollars (\$25,000).

## **ARTICLE 10 - MISCELLANEOUS**

10.1 EXTENT OF AGREEMENT. Except as expressly provided, this Agreement is for the exclusive benefit of the Parties, and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of Owner and Consultant and not for the benefit of any third party.

10.2 ASSIGNMENT. Except as to the assignment of proceeds, neither Party shall assign its interest in this Agreement without the written consent of the other Party. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns and legal representatives. Neither Party shall assign the Agreement as a whole without written consent of the other except that Owner may assign the Agreement to a wholly-owned subsidiary of Owner when Owner has fully indemnified Consultant or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Consultant than this Agreement. In the event of such assignment, Consultant shall execute any consent reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Agreement. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.



10.3 GOVERNING LAW. This Agreement shall be governed by the law in effect at the location of the Project.

10.4 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.5 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

10.6 TITLES. The titles given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

10.7 JOINT DRAFTING. The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

10.8 RIGHTS AND REMEDIES. The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

This Agreement is entered into as of the date entered in ARTICLE 1.

OWNER: CITY OF COUNCIL BLUFFS, IOWA

BY: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

CONSULTANT: STUDIO 15 COMMERCIAL INTERIORS, INC.

BY: \_\_\_\_\_ NAME: D. Erik Sneed TITLE: CFO

WITNESS: \_\_\_\_\_ NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

END OF DOCUMENT.



**RESOLUTION NO. 17-170**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH STUDIO 15 FOR THIRD PARTY INSPECTION SERVICES AT THE VANDALAY PROJECT SITE.**

**WHEREAS,** the Permits and Inspections Division requests to contract with a third party inspection service for the completion of permitted buildings; and

**WHEREAS,** due to the large volume of work and travel distance the City staff is unable to make all required inspections at all of the construction sites; and

**WHEREAS,** Studio 15 was selected as the best and most qualified applicant for inspection services; and

**WHEREAS,** Vandalay has agreed to pay for the cost of the third party inspection services contract; and

**WHEREAS,** it is in the best interest of the City of Council Bluffs to execute the contract with Studio 15.

**NOW, THEREFORE, BE IT RESOLVED  
BY THE CITY COUNCIL  
OF THE  
CITY OF COUNCIL BLUFFS, IOWA**

That the Mayor of Council Bluffs is hereby authorized to execute the Agreement with Studio 15.

ADOPTED  
AND  
APPROVED

July 24, 2017.

\_\_\_\_\_  
MATTHEW J. WALSH

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
JODI QUAKENBUSH

\_\_\_\_\_  
City Clerk



## Council Communication

Department: City Clerk

Case/Project No.: Jodi Quakenbush

Submitted by: Jodi Quakenbush

Liquor Licenses

Council Action: 7/24/2017

### Description

- 1) American Legion, 716 4th Street (Renewal)
- 2) Underground Restaurant & Billiards, 28 S. 29th Street (Renewal)
- 3) Council Bluffs Ribfest 2017 on 8-11-17 (Special Event)

### Background/Discussion

### Recommendation

### ATTACHMENTS:

Description

Type

Upload Date

## Council Communication

Department: City Clerk

Case/Project No.:

Rhonda Burman - 190 Bennett Ave

Council Action: 7/24/2017

Submitted by: Matthew Walsh

### Description

#### Background/Discussion

My name is Rhonda Burman. I live at 190 Bennett Ave, Council Bluffs.

#### Request Details:

I would like to request the right to have an item placed on the Agenda (including a request to speak) at a city council meeting July 24, 2017 at 7:00pm.

I have contacted City staff regarding the subject matter: Ditch in my back yard.

From my house, downstream an easement exists allowing the city to access the private property to maintain the ditch. From the rear of my property line upstream to Franklin Ave there is no easement to the city and therefore is a private ditch with maintenance responsibly falling on the property owners.

#### This is the problem that we have:

Behind our garage is a drain ditch for the water to flow downhill when it rains. The owner of that property did not do the underground pipe like all of us did.

The property owner is now elderly and does not take care of the ditch, when it is not maintained it causes it to flood, and right into my property and home. I have had 3 feet of water flow right thru my garage and my home. I have gone down to the ditch and tried to keep the opening clear of branch's and garbage, but this should be done by the property owner. I have a truck load of trees and brush that I have removed out of the ditch that I will need someone to pick up from the city from the last storm.

Every time it rains, I must stay awake and watch outside to make sure our property does not flood. I have been outside during storms that I should have been in my basement. I have been hit by hail, drenched from being out in rain for hours clearing the drain and tired of cleaning up the mess of others just to protect my family and property.

#### Can we get the city involved to get the ditch buried and then the owner will not have to take care of it?

I would like to put this on the City agenda for the next meeting. This has been a burden on me and my family because of the neglect from the property owner and needs to be taken care of.

I have spoken to Greg Reeder the director of Public works and Jodi Quakenbush the City Clerk.

Please address this issue and my request,

Rhonda Burman

### Recommendation